Supreme Court, U. S.
FILED
JUL 17 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1044

MASSACHUSETTS
BOARD OF RETIREMENT, ET AL.,
APPELLANTS,

v.

ROBERT D. MURGIA,
APPELLEE.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

FILED FEBRUARY 21, 1975

PROBABLE JURISDICTION NOTED MAY 19, 1975

APPENDIX

In the Supreme Court of the United States

October Term, 1974

No. 74-1044

Massachusetts Board of Retirement, ET AL.
Appellants

v.

Robert D. Murgia,
Appellee.

On Appeal From The United States District Court For The District Of Massachusetts

Filed February 21, 1975

Probable Jurisdiction Noted May 19, 1975

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UNITED STATES DISTRICT COURT

Three-Judge Court

Aldrich, Sr. J., Freedman, D. J., Tauro, D. J.

C.A. 72-2083-T

Commonwealth of Massachusetts Board of Retirmment and John J. Kehoe, Jr., Commissioner of Public Safety

Docket Entries

1972

July 7 Complaint filed. (Request for three-judge court and TRO)

17 Appearance of William F. Looney, Jr., for the pltf, filed.

17 MURRAY, D. J. DISQUALIFICATION entered. "I hereby disqualify myself in the within case for the reason that the plaintiff is represented by the law firm with whom my son Robert is associated in the practice of law."

18 CAMPBELL, D.J. Hearing on plaintiff's motion for temporary restraining order and request for three-judge Court; evidence,

testimony, plaintiff's memorandum of law...filed. Taken under advisement.

20 Affidavit of the plaintiff, Robert D. Murgia, filed.

21 CAMPBELL, D.J. MEMORANDUM AND ORDER ENTERED: "...Plaintiff's prayers for a temporary restraining order and for the convening of a three-judge court are denied. As the complaint does not raise a substantial constitutional question, and as it is essential to jurisdiction that a substantial constitutional question be raised, the complaint is dismissed. ...." Copy To Messrs. Looney, O'Callaghan and Mayo. West Pub.

26 CAMPBELL, D.J. JUDGMENT ENTERED: "Judgment for the defendant; complaint dismissed." Copy to Messrs. Looney, O'Callaghan and Mayo.

Aug. 18 Pltff's notice of appeal filed. Copy to Walter Mayor Esq.

18 Cost Bond in the amount of

$250.00 filed.

Aug. 21 Certified copy of docket entries and original pleadings delivered to the Court of Appeals.

1973

6/25 Stenographic transcript of proceedings on July 18, 1972 filed and delivered to the Court of Appeals under Supplemental Certificate.

Sep 10 Memorandum and Order received from the Court of Appeals entered..... It is ordered that the judgment be set aside and the case is remanded for the impanelling of a three-judge court. No. costs.

Oct 2 Mandate received from the Court of Appeals entered....Original pleadings returned from the Court of Appeals.

16 COFFIN, CH.J. Order entered designating Judges Aldrich, Freedman and Tauro as Three-Judge Court panel.

26 Defendant's Motion to Dismiss, filed c/s.

29 Letter dated October 19, 1973 to Mr. Doherty from Mr. City re hearing to be scheduled after January 11, 1974, filed.

1974

Jan. 16 Letter to Mr. Doherty, Deputy Clerk from Mr. Robert D. City, Esq. dated 1/16/74 RE: request for hearing in the month of March, filed.

18 Notice of hearing on the merits on Thursday, March 7, 1974 at 2 P.M. to Messrs. City, O'Malley and Wise. Counsel to file agree statement of facts by Noon, March 4, 1974.

Feb. 1 Notice of taking the deposition of Col Paul J. Murphy, filed c/s.

1 Notice of taking the deposition of Dr. Thomas F. Silva, Jr., filed c/s.

20 Notice of rescheduling of hearing to Wednesday, March 13, 1974 at 2 P.M. to Messrs. City, Wise and O'Malley.

22 Notice of the taking of the deposition of Dr. Thomas W.

Dawber, filed. c/s.

Mar. 6 Amended Complaint, filed c/s.

13 ALDRICH, S.C.J., FREEDMAN, D.J., TAURO, D.J., 3 Judge Court Hearing; Counsel to submit proposed schedule of events leading up to date of hearing on merits, within one week (3/20/74); Hearing on Defendant's Motion to Dismiss; Defendant and Plaintiff argue; Motion DENIED without prejudice.

19 Answer of the Dfts. CRANE, AMATO and MALONEY as members and the Dft. CALLANAN as Executive Secretary of the Board of Retirement of the Commonwealth of Mass., filed c/s.

20 Proposed Schedule of Events, filed

20 Request for Admission Under Rule 36, filed c/s.

20 TAURO, D.J., The proposed schedule of events is APPROVED and shall be considered an ORDER OF THE COURT. Copies to Counsel: Callaghan, Looney and O'Malley.

27 Letter to Clerk from Mr. City re schedule of hearing for April 4,

1974 at 10 A.M. Copy to ALDRICH, C.J., FREEDMAN, D.J. and TAURO, D.J.

29 Response of Dfts. to request for admissions, filed c/s.

Apr. 2 Affidavit of John F. Kehoe, Jr., filed c/s.

3 Affidavit of Dr. Thomas Lee Kurt, filed.

3 TAURO, D.J. Order entered: "...parties are instructed to file proposed findings of fact ...not later than April 29, 1974." Copy to Mr. Lucey and O'Malley and Wise.

3 Letter to Mr. Doherty from Mr. Lucey dated April 3, 1974 RE: waiver of live evidence-briefs instead., filed.

4 Agreed Documents (1 large Black Volume) filed, with copies for 3 Judges

25 Pltff's motion to extend time to file proposed findings of fact to May 3, 1974, assented to, filed.

26 TAURO, D.J. Above motion allowed.

Copy to Messrs. City and O'Malley and Judges Aldrich, Freedman and Tauro.

May 6 Defendants' Proposed findings of fact, filed c/s.

Defendants' brief, filed c/s.

6 Amicus Brief, filed c/s.

6 Brief for the Plaintiff, filed c/s.

7 Plaintiff's Request for Findings of Fact, filed c/s.

31 ALDRICH, SCJ., FREEDMAN, D.J. and TAURO, D.J. Opinion filed: "...Judgment will be entered declaring Mass. G.L. c 32 §26(3) unconstitutional and void, and awarding, after hearing, appropriate mandatory relief." Copy to Messrs. Wise, City, O'Malley, West Publishing Co. and Mass. Lawyers Weekly and Opinion Book.

June 7 Copy of Letter to Commissioner Kehoe from Mr. Looney, Esq. RE: meeting on Murgia decision and possibility of smoothly reinstating Col. Murgia, filed.

26 TAURO, D.J. Order entered: "The parties are requested to submit within three (3) weeks memoranda

detailing their respective views as to the form of relief that should issue in this case, particularly with respect to 1) reinstatement 2) back pay." Copy to Messrs. City, O'Malley, Wise and Judges Aldrich and Freedman.

July 17 Memorandum of the Dfts. as to the form of relief, filed c/s.

19 Pltff's memo as to the form of relief, filed c/s.

22 TAURO, D.J. Order entered: "The parties are requested to submit on or before August 26, 1974 memoranda on the question of whether the relief requested be considered by a three-judge court or a single judge." Copy to Messrs. City, O'Malley and Judges Aldrich and Freedman.

Aug 5 Pltff's memo on question of relief by single or three-judge court, filed

26 Dfts' memo as to whether the relief requested is to be considered by a three-judge court or a single judge, filed cs/.

Sep 24 Notice of hearing for October 22, 1974 at 2 P.M. to Messrs. City, Wise and O'Malley.

26 Motion for John F. Downey to be added as a party pltf., for the purpose of Mandatory relief, filed c/s.

Oct. 1 Opposition of defts to "Motion of John F. Downey to be added as a party pltf for the purpose of Mandatory Relief"

24 ALDRICH, S.C.J., FREEDMAN, D.J. and TAURO, D.J., Three-Judge Court Hearing motion to add party pltff., Denied; Motion to be filed adding Party deft., (Commissioner of Public Safety) Counsel to file proposed final order and briefs by Friday Oct. 25, 1974.

Nov 1 Supplemental memo of Pltff. on the question of the effect of the 11th amendment upon the relief to be granted plaintiff, filed;

1 Motion to Join John F. Kehoe, Jr., Commissioner of Public Safety as party Defendant, assented to, filed.

1 Proposed judgment, filed.

Dec 12 ALDRICH, C.J., FREEDMAN, D.J., TAURO, D.J.

Opinion and Order entered: "Mass. Gen. Law c 32 §26(3) is declared unconstitutional and void....It is further ordered that the plaintiff be reinstated to the position of Lt. Colonel in the Uniformed Branch of the Mass. State Police....This order is stayed pending appeal, provided that notice of appeal is filed within 30 days." Copy to Messrs. Wise, City, O'Malley, West Publishing Co., NCAIR and opinion book.

[TITLE OMITTED IN PRINTING]

COMPLAINT

1. The Complainant is a citizen of the Commonwealth of Massachusetts.

2. The action arises under U.S.C. Title 28, Section 1343 (3) and the Fourteenth Amendment to the Constitution of the United States, Section 1, as hereinafter more fully appears.

3. The Complainant is an officer of the State Police of the Commonwealth of Massachusetts with more than 20 years service, and will attain his fiftieth birthday on July 23, 1972.

4. Notice has been given the Complainant by the Board of Retirement of the Commonwealth that he must retire on that date in accordance with Chapter 32, Section 5(1)(a) of the General Laws of the Commonwealth. A copy of said notice is appended to this Complaint and marked "A". Copies of the noted State Statutes are appended hereto and marked "B".

5. The Complainant is a member of the uniformed branch of the State Police appointed under General Laws, Chapter 22, Section 9(a) and classified in Group 3.

6. By virtue of this classification, the Complainant's retirement is governed by General Laws, Chapter 32, Section 26 (3)(a), the last sentence thereof. This sentence is as follows:

"Any member in service classified in Group 3 who is an officer appointed under section nine A of

chapter twenty-two and who has performed service in the division of state police in the department of public safety for not less than twenty years, shall be retired by the state board of retirement upon his attaining age fifty or upon the expiration of such twenty years, whichever last occurs."

7. The Complainant avers that the application of the statute compelling his retirement is arbitrary and capricious and denies him equal protection with others of the same class in his employment in that:

(a) Men have been employed by the State Police, taken a leave of absence of many years, and returned to the force and continued their employment up to age 65 because they have not completed their 20 years service.

(b) Detectives in the State Police who perform similar functions as the uniformed branch are permitted to continue in their employment under General Laws, Chapter

32, Section 26 (3) to the age of 65.

(c) Women in the State Police by virtue of an exception in General Laws, Chapter 22, Section 9 A are permitted to continue their employment beyond the age of 50.

8. The Complainant believes, and therefore avers, that the application of General Laws, Chapter 32, Section 26 (3) (a) to force his retirement at age 50 deprives him of his equal rights to employment with others of the same class and is, therefore, unconstitutional.

9. The Complainant avers that such forced retirement will cause irreparable damage by preventing him from accumulating more years of service for his pension benefits, loss of pay and increase of life and health insurance costs.

Wherefore, the Complainant demands:

1. Pursuant to the provisions of U.S.C. Title 28, Section 2284 (3) that this Honorable Court grant a temporary restraining order preventing the Board of Retirement from invoking General Laws,

Chapter 32, Section 5(1)(a) and General Laws, Chapter 32, Section 26(3)(a) to cause the loss of his position in the State to the Complainant, thus preventing irreparable damage to said Complainant.

2. That this Honorable Court convene a three judge court in accordance with the requirements of U.S.C. Title 28, Sections 2281 and 2284 to determine the constitutionality of General Laws, Chapter 32, Section 26, (3)(a) as said statute affects the rights of the Complainant.

3. That after a hearing on the merits to permanently restrain the Board of Retirement from invoking General Laws, Chapter 32, Section 5(1)(a) and Chapter 32, Section 26(3)(a) to cause the retirement of the Complainant until such time as the equal protection of those laws are extended to the Complainant as well as others in his own class.

Respectfully submitted,

/s/

Attorney for Complainant

[JURAT OMITTED IN PRINTING]

[The Memorandum and Order of the District Court dated July 21, 1972 is printed in a separate appendix to the Jurisdictional Statement at pages 1-8.]

[The Judgment of the District Court dated July 26, 1972 is printed in a separate appendix to the Jurisdictional Statement at page 9.]

[The Memorandum and Order of the Court of Appeals is printed in a separate appendix to the Jurisdictional Statement at page 10.]

[TITLE OMITTED IN PRINTING]

MOTION TO DISMISS

Now comes the defendant Board of Retirement in the above-entitled case and moves this Court to dismiss the complaint. In support of said motion, the defendant states:

1. The complaint fails to state a claim upon which relief can be granted.

2. The complaint fails to suffi-

ciently allege jurisdiction over the subject matter of the complaint.

3. The plaintiff lacks standing.

4. The complaint fails to name any state officer as a party defendant.

By its attorney,

/s/
Terence P. O'Malley
Assistant Attorney General

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

AMENDED COMPLAINT

The Parties

1. The plaintiff, ROBERT D. MURGIA, is a citizen of the Commonwealth of Massachusetts and a resident of Andover, Essex County, Massachusetts.

2. The defendant, COMMONWEALTH OF MASSACHUSETTS BOARD OF RETIREMENT (hereinafter "BOARD OF RETIREMENT") is an administrative agency of the Commonwealth of Massachusetts located at 73 Tremont Street, Boston, Massachusetts, established under the provisions of Section 18, Chapter 10, Massachusetts

General Laws, having jurisdiction of the Retirement System established under the provisions of Chapter 32 of Massachusetts General Laws.

3. The defendant Robert Q. Crane is the State Treasurer of the Commonwealth of Massachusetts and is the Chairman of the BOARD OF RETIREMENT.

4. The defendant Angelo Amato is a member of the BOARD OF RETIREMENT.

5. The defendant J. Joseph Maloney, Jr. is a member of the BOARD OF RETIREMENT.

6. The defendant James W. Callanan is the Executive Secretary of the BOARD OF RETIREMENT.

Jurisdiction

7. This action is brought pursuant to Section 1983, Title 42, United States Code, and the Fifth and Fourteenth Amendments to the Constitution of the United States seeking a permanent injunction restraining the enforcement, operation or execution of an order made by administrative board or commission acting under a state statute. Jurisdiction is conferred upon the Court under Section 1343, Title 28, United States Code. Declaratory and related

injunctive relief are authorized by Sections 2201 and 2202, Title 28, United States Code.

Statement of the Claim

8. Plaintiff was born on July 23, 1922, and reached his fiftieth birthday on July 23, 1972.

9. On April 7, 1948, plaintiff was appointed to be a member of the uniformed branch of the Massachusetts State Police pursuant to Section 9(a) of Chapter 22 of the Massachusetts General Laws. He served with distinction as a uniformed State Policeman and in 1967 attained the rank of Lieutenant Colonel, the highest rank in the uniformed branch of the Massachusetts State Police.

10. As a member of the uniformed branch of the Massachusetts State Police, plaintiff was classified for retirement purposes as Group 3 and was subject to Section 26, Chapter 32 of Massachusetts General Laws which provides in part:

> "Any member in service classified in Group 3 who is an officer appointed under section nine A of Chapter

> twenty-two and who has performed service in the division of state police in the department of public safety for not less than twenty years, shall be retired by the state board of retirement upon his attaining age fifty or upon the expiration of such twenty years, which ever last occurs."

11. On May 8, 1972, plaintiff received a letter from the BOARD OF RETIREMENT informing the plaintiff that he would be retired on his fiftieth birthday, July 23, 1972, in accordance with the terms of G.L. c. 32, §3(a). A copy of the letter of the BOARD OF RETIREMENT is appended hereto and made a part hereof as Exhibit A. Copies of the statutes of the Commonwealth of Massachusetts noted in the letter of the BOARD OF RETIREMENT are appended hereto and made a part hereof as Exhibit B. Plaintiff refused to voluntarily retire and commenced this action on July 6, 1972, to prevent his involuntary retirement.

12. On July 23, 1972, plaintiff was involuntarily retired under the provisions of Section 3(a) of Chapter 32 of Massa-

chusetts General Laws, for superannuation because he had reached his fiftieth birthday.

13. At the time of his retirement plaintiff was, and at the present time plaintiff is, in excellent physical and mental health; he was and is fully capable and qualified to remain in his employment as the Lieutenant Colonel of the uniformed branch of the Massachusetts State Police. At present, plaintiff stands ready, willing and able to continue in that employment.

14. The statutes under which the BOARD OF RETIREMENT, its Members and its Executive Secretary acted to involuntarily retire the plaintiff at age fifty regardless of his qualifications to continue in his employment are unconstitutional in that the statutes bear no valid relationship to any state interest in the effective operation of the Massachusetts State Police and are violative of due process in that they create an unwarranted conclusive presumption that the plaintiff is unfit for or incapable of continuing his duties as a member of the uniformed branch of the Massachusetts

State Police because of his age, whereas an individual's ability to continue in his employment after age 50 and prior to the conventional retirement age of 65 is a matter which can only be determined on an individual basis.

15. The statutes under which the BOARD OF RETIREMENT, its members and its Executive Secretary acted to force the plaintiff's retirement at age fifty are unconstitutional because they deny plaintiff equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that the classification based upon age is not equally applied to others in the same or similar class because:

(a) A proviso to the statute requires men to serve at least twenty years before being eligible for retirement. On occasion men have been employed by the State Police who have taken a leave of absence of many years and who subsequently returned to the force.

After having achieved 20 years

of service these men were retired. Some of them, at the time of retirement, had reached ages of up to 65.

(b) detectives in the State Police who perform similar functions as the uniformed branch are permitted to continue in their employment under Section 26(3), Chapter 32, Massachusetts General Laws, to the age of 65, and

(c) police officers in the cities and towns of the Commonwealth of Massachusetts, who perform similar functions as the uniformed branch of the State Police are permitted to continue in their employment to age 65 under Section 83A(a), Chapter 32 of Massachusetts General Laws.

16. The statutes under which the defendant BOARD OF RETIREMENT, its members and its Executive Secretary acted to involuntarily retire plaintiff at age fifty are unconstitutional because they

deny plaintiff equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that a classification based upon sex is not equally applied because women in the State Police by virtue of an exception in General Laws c. 22, §9A, are permitted to continue their employment beyond the age of 50.

17. The plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that this court:

1. Declare that the statutes under which the defendant BOARD OF RETIREMENT, ITS MEMBERS and its Executive Secretary acted are unconstitutional in that they abridge the plaintiff's right to a determination as to fitness and ability with respect to retirement for superannuation in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.
2. Declare that the statutes under which the defendant BOARD OF RETIREMENT, its members and its

Executive Secretary acted to involuntarily retire plaintiff at age fifty are unconstitutional in that they deny to the plaintiff the equal protection of the laws with respect to classification based on age and sex in violation of the Fourteenth Amendment to the Constitution of the United States.

3. Order that the plaintiff be restored to his employment as Lieutenant Colonel of the uniformed branch of the Massachusetts State Police with salary as of July 23, 1972.

4. Order that costs of maintaining this action including reasonable attorneys fees be awarded to the plaintiff.

5. Order such other and further relief as this Court may deem just and proper.

ROBERT D. MURGIA
By his attorney,
MOULTON, LOONEY,
MAZZONE, FALK & MARKHAM

By /s/
Robert D. City

15 Broad Street
Boston, Massachusetts
Tel 742-5550

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]

[EXHIBITS A and B OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

ANSWER OF THE DEFENDANTS CRANE, AMATO AND MALONEY AS MEMBERS AND THE DEFENDANT CALLANAN AS THE EXECUTIVE SECRETARY OF THE BOARD OF RETIREMENT OF THE COMMONWEALTH OF MASSACHUSETTS

The defendants answer to the various allegations of the numbered paragraphs of the amended complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. The allegations of paragraph 7 are conclusions of law and do not require an answer.
8. Admitted.

9. Admitted as to the first and the second sentence except that part of the second sentence which alleges that the rank of Lieutenant Colonel is the highest rank in the Uniformed Branch of the Massachusetts State Police is denied.

10. Admitted insofar as they are allegations of fact and not conclusions of law.

11. Admitted.

12. Admitted.

13. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 and call upon the plaintiff to prove the same, if material.

14. Insofar as the allegations of paragraph 14 are ones of fact and not conclusions of law, the defendants are without knowledge or information sufficient to form abelief as to the truth of said allegations and call upon the plaintiff to prove the same, if material.

15. a. Denied, except that the first sentence of paragraph 15. a. is a conclusion of law and does not require an answer.

b. Denied insofar as they are allegations of fact and not conclusions

of law.

c. Denied insofar as they are allegations of fact and not conclusions of law.

16. The allegations of paragraph 16 are conclusions of law and do not require an answer.

17. The allegation of paragraph 17 is a conclusion of law and does not require an answer.

FIRST AFFIRMATIVE DEFENSE

And, the defendants further answer that the plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

And, the defendants further answer that the Court lacks jurisdiction over the subject matter of the complaint.

THIRD AFFIRMATIVE DEFENSE

And, the defendants further answer that the plaintiff lacks standing.

By their attorney,

/s/

Terence P. O'Malley
Assistant Attorney General

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REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff Robert D. Murgia requests the defendants in the above-entitled cause, on or before April 3, 1974, to make admissions, for the purposes of this action only and subject to all pertinent objections to admissability which may be interposed at the trial, to each of the statements set forth in a document titled "Proposed Agreed Statement of Facts" which has been attached hereto, made a part hereof and marked "A."

ROBERT D. MURGIA

By his attorneys,

MOULTON, LOONEY, MAZZONE, FALK & MARKHAM

By_____
Robert D. City

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

PROPOSED STATEMENT OF FACTS

1. The plaintiff Robert D. Murgia is a citizen of the Commonwealth of Massa-

chusetts and a resident of Andover, Essex County, Massachusetts.

2. The defendant Commonwealth of Massachusetts Board of Retirement (hereinafter Retirement Board) is an administrative agency of the Commonwealth of Massachusetts located at 73 Tremont Street, Boston, Massachusetts, established under the provision of G.L. c. 10 §18 and is charged with the administration of the Retirement System of the Commonwealth of Massachusetts established under the provisions of G.L. c. 32.

3. The defendant Robert Q. Crane is the Chairman of the Retirement Board and the defendants Angelo Amato and J. Joseph Maloney are members of the Retirement Board. James W. Callanan is the Executive Secretary.

4. The action is brought pursuant to 42 U.S.C. §1983 and the Fifth and Fourteenth Amendments to the Constitution of the United States.

5. Jurisdiction over this matter is conferred upon the Court under the provisions of 28 U.S.C. §1343.

6. Declaratory and related relief are authorized by 28 U.S.C. §§2201-2202.

7. The Massachusetts State Police is a division of the Department of Public Safety and is created under the provisions of G.L. c. 22.

8. Within the Massachusetts State Police there are two branches, the Uniformed Branch created under the provisions of G.L. c. 22 §9 and 9A, the Detective Branch created uneer the provisions of G.L. c. 22 §6.

9. The Lieutenant Colonel is the second senior commissioned officer in the Uniformed Branch of the Massachusetts State Police and serves directly under the Commissioner of Public Safety who is also the senior officer.

10. The Uniformed Branch is divided into five bureau commands: Eastern Field Operations, Western Field Operations, Investigative Services, Administrative Services and Technical Services. Approximately 80% of the personnel of the Uniformed Branch are assigned to Field Operations. Each command is in turn subdivided into units.

11. At present there are approximately 880 members of the Uniformed Branch of the Massachusetts State Police including

approximately 137 assigned to the Massachusetts Turnpike Authority and the Massachusetts Port Authority.

12. A person may enlist initially as a member of the Uniformed Branch of the Massachusetts State Police for a term not exceeding three years upon obtaining satisfactory scores on a written examination and passing an enlistment physical examination.

13. After serving a term in the Uniformed Branch of the Massachusetts State Police, a member may reenlist for a second term and thereafter for subsequent terms until he reaches the age of fifty. He may reenlist over age fifty only if he does not have twenty years of service in the Uniformed Branch.

14. By administrative practice the enlistment and re-enlistment terms have been set at two years.

15. There are provisions for the temporary appointment of troopers to the Uniformed Branch of the Massachusetts State Police.

16. Members of the Uniformed Branch of the Massachusetts State Police are not subject to the Civil Service Law and

Rules; members of the Detective Branch are subject to the Civil Service Law and Rules.

17. No person who has not reached his twenty-first birthday nor any person who has passed his thirtieth birthday may be enlisted for the first time as an officer of the Uniformed Branch of the State Police, but the maximum age restrictions have been waived or modified on an ad hoc basis to permit over age enlistment on occasion.

18. The maximum enlistment age restrictions do not apply in the case of the enlistment of women.

19. Members of the Uniformed Branch of the Massachusetts State Police are given physical examinations as part of their application for re-enlistment. This examination is called a re-enlistment physical examination.

20. No officer appointed to the Uniformed Branch may be denied re-enlistment if he has served satisfactorily for six years or more, provided he has passed the re-enlistment physical examination.

21. Members of the Uniformed Branch of the Massachusetts State Police over

the age of forty are given annual physical examinations.

22. Members of the Uniformed Branch of the Massachusetts State Police over age fifty are given annual physical examinations.

23. The requirements for the enlistment, re-enlistment and annual physical examination are set forth in Exhibit I of the Agreed documents. The requirements for each type of examination are essentially similar.

24. The failure of a member or candidate to meet the physical examination requirements in any respect is called a defect.

25. Defects may be of a permanent or temporary nature and are analyzed by the Surgeon General of the Massachusetts State Police to determine whether or not the defect is one which would impair the individual's ability to perform his duties as a member of the Uniformed Branch of the Massachusetts State Police.

26. If the Surgeon General determines the individual's defect to be one which would not impair the individual's ability to perform his duties as a member of the

Uniformed Branch of the Massachusetts State Police, the individual is not disqualified from enlistment or re-enlistment.

27. If the Surgeon General determines the individual's defect to be one which would impair the individual's ability to perform his duties as a member of the Uniformed Branch of the Massachusetts State Police this fact is reported to the Commissioner of Public Safety who may not permit the member to enlist or re-enlist.

28. No member may be discharged for failure to pass the physical examination prescribed by the Rules and Regulations of the Uniformed Branch, but shall continue to be engaged as such officer with duties adapted to his physical condition.

29. Members may re-enlist in the Uniformed Branch after discovery of a defect and failure to pass the physical examination provided the Commissioner of Public Safety waives the physical examination requirements.

30. In 1973 there were approximately 12 officers serving in the Uniformed Branch of the Massachusetts State Police who had waivers on disqualiftying [sic] physical defects in connection with re-enlistment.

31. The Uniformed Branch of the Massachusetts State Police is organized in a para-military fashion. The order of ranks and grades of the Uniformed Branch and the number of men in each is as follows: Colonel (1), Lieutenant Colonel (1), Major (5), Captain (14), Lieutenant (32, 1 woman), Staff Sergeant (56, 29 woman), Sergeant (54), Corporate (68), and Trooper (c. 650).

32. The duties and responsibilities of members of the Uniformed Branch of the Massachusetts State Police are set forth in the Rules and Regulations of the Massachusetts State Police Uniformed Branch and particularly Rule 5 thereof; General Orders, Special Orders, Circular Letters, Memoranda and Troop Orders.

33. The primary duty of the members of the Uniformed Branch of the Massachusetts State Police is the maintenance of Law and Order, the prevention and detection of crime and protection of life and property and the apprehension of violators of law.

34. The duties assigned to the members of the Uniformed Branch of the Massachusetts State Police vary according to the

members rank and the Bureau to which they are assigned. The duties assigned to the members of the Uniformed Branch of the Massachusetts State Police do not vary depending upon the members age. Each member is required to perform his assigned duties regardless of age.

35. The general responsibilities of the Lieutenant Colonel are to assist the Commissioner of Public Safety in the administration of the Uniformed Branch of the Massachusetts State Police.

36. Specific responsibilities assigned to various members of the Uniformed Branch of the Massachusetts State Police, other than Lieutenant Colonel, and others in administrative positions include road patrolling, investigation of crimes, and apprehension of criminals, preparation and prosecution of court cases, maintenance and restoration of order in civil disturbances and prison disorders, and technical laboratory services. Members of the Uniformed Branch are subject to twenty-four hour call to respond to emergency duty.

37. The duties of the Detective Branch of the Massachusetts State Police include

the investigation of major crimes and criminal activities, the detection and arrest of criminals, the collection of evidence and assistance in the preparation and prosecution of cases in Court.

38. Certain duties of the Detective Branch and the Uniformed Branch of the Massachusetts State Police are similar.

39. The primary duties of the police officers of the cities and towns of the Commonwealth of Massachusetts include the prevention and detection of crime, road patrolling, investigation of crimes and apprehension of criminals and preparation and prosecution of Court cases.

40. Certain duties of the police officers of the cities and towns of the Commonwealth of Massachusetts and the Uniformed Branch of the Massachusetts State Police are similar.

41. Members of the Uniformed Branch of the Massachusetts State Police may be promoted to the grades as non-commissioned officers, lieutenant and captain when vacancies occur in those ranks based upon the members performance on a competitive examination, performance evaluation reports, oral interviews in the case of

lieutenants and captains only and longevity in service.

42. To be eligible for promotion to any of the following grades the member must have completed the following periods of service in the Uniformed Branch: corporal - four years; sergeant - six years; staff sergeant - eight years; lieutenant - ten years; captain - twelve years; and staff captain - fourteen years.

43. Appointment to the grade of Lieutenant Colonel is made by the Commissioner from members in the next subordinate grade and appointment to the grade of Major is made by the Commissioner from members in the next subordinate grade.

44. Promotion is not related to physical condition and no physical examination is required for promotion.

45. No member is required to seek promotion and no member is required to retire if he fails to obtain a promotion.

46. A member of the Uniformed Branch of the Massachusetts State Police may retire with full retirement benefits after twenty years of service.

47. A member of the Uniformed Branch of the Massachusetts State Police, who has twenty years of service must retire

upon reaching age 50.

48. A member of the Uniformed Branch of the Massachusetts State Police who does not have twenty years of service may not retire at age fifty but must serve until he completes twenty years of service to be eligible for full retirement benefits.

49. On occasion members have taken leaves of absence with the approval of the Commissioner or have resigned for a period of time and then rejoined the Uniformed Branch with the result that members may not complete twenty years of service until after reaching age fifty.

50. At present, on members of the Uniformed Branch of the Massachusetts State Police is over age fifty and a second will be over the age of fifty when he becomes eligible for retirement. There is a female member of the Uniformed Branch of the Massachusetts State Police over the age of fifty.

51. G.L. c. 32 s 26(3)(a) which requires members of the Uniformed Branch of the Massachusetts State Police to retire at age fifty or upon the expiration of twenty years service results in a force

in which all but a few members are under fifty years of age.

52. The performance of the duties of Massachusetts State Police, especially in the Field Functions, such as road patrolling and maintaining order at civil disturbances, may require a high degree of physical exertion which becomes increasingly more difficult to perform with advancing age.

53. In two samples of the general male population of the Commonwealth of Massachusetts - ages 20 - 25 and ages 45 - 50, a greater percentage of the age 50 sample will be unable to perform the physical activity required of the Uniformed Branch of the Massachusetts State Police than in the case of the age 25 sample.

54. In two samples of the general male population of the Commonwealth of Massachusetts - ages 45 - 50 and ages 50 - 55, there is no substantial difference in the percentage of each group which would be unable to perform the physical activity required of the Uniformed Branch of the Massachusetts State Police.

55. To qualify to perform the duties of the Uniformed Branch of the Massachusetts

State Police, a member must be found physically fit. When a member passes his re-enlistment or annual physical, he is found to be qualified to perform all of the duties of the Uniformed Branch of the Massachusetts State Police.

56. In two samples of the members of the Uniformed Branch of the Massachusetts State Police ages 21 - and ages 45 - 49 who have been given re-enlistment and/or annual physical examinations and who are not serving under waivers of disqualifying physical defects, there is no difference in the percentage of each group which is able to perform the physical activity required of the Uniformed Branch of the Massachusetts State Police; all members are able to perform all of the duties of the Uniformed Branch.

57. There is no necessary, absolute or certain relationship between a given individual members age and his ability to perform the physical activity required of the Uniformed Branch of the Massachusetts State Police.

58. An individual members ability to perform the physical activity required of the Uniformed Branch of the Massachusetts

State Police varies with his physical condition and his age.

59. Any individual member of the Uniformed Branch of the Massachusetts State Police whose age is fifty years or more may be capable of performing the physical activity required of the Uniformed Branch of the Massachusetts State Police depending upon his individual physical condition.

60. A members physical condition as it relates to his ability to perform the duties of the Uniformed Branch is determined at annual and/or re-enlistment physical examinations; members who pass the physical examination are determined able to perform the duties of the Uniformed Branch.

61. Members under age fifty or who are fifty or over but who have less than twenty years of service and who fail to pass the physical examinations may be retired for disability or may be continued in service under a waiver and assigned duties adapted to their physical condition.

62. There are members of the Uniformed Branch serving under waivers who are not capable of performing all of the duties of the Uniformed Branch and who must be assigned special duties.

63. Members who pass the physical examinations and are fully qualified to continue in service must retire if they are fifty years of age and have twenty years of service.

64. Members who pass the physical examination and are fully qualified to continue in service need not retire if they are fifty years of age or over but do not have twenty years of service.

65. There are members serving in the Uniformed Branch of the Massachusetts State Police whose ages are over fifty and who perform all of the duties required of the Uniformed Branch.

66. As a member's age increases the statistical liklihood of incurring a disease or disability which would render the member incapable of performing the physical activity required of the Uniformed Branch increases.

67. The statistical liklihood of a member incurring a disease or disability which would render him incapable of performing the physical activity required of the Uniformed Branch increases gradually from age 20 through age 40, then at an increased rate from 40 to age 65

and thereafter more sharply.

68. There is no significant statistical increase in a members liklihood to incur or to have incurred an incapacitating disease or disability at age 50 as compared to the ages immediately preceeding or following age 50.

69. Members of the Detective Branch of the Massachusetts State Police who have twenty years of service are retired at age fifty-five unless certified annually that the mental and physical condition of the officer is such that he should continue in his duties.

70. If found qualified, a member of the Detective Branch of the Massachusetts State Police may continue in his employment until he reaches age sixty-five.

71. Members of the police department of the cities and towns of the Commonwealth of Massachusetts are retired at age sixty-five.

72. Mandatory retirement at age fifty of members of the Uniformed Branch tends to create vacancies in the various ranks sooner and more often than would be the case with a later retirement age.

73. Vacancies in ranks caused by

mandatory retirement at age fifty are filled by promoting members of the Uniformed Branch.

74. Robert D. Murgia was born on July 23, 1922.

75. Robert D. Murgia was appointed a member of the Uniformed Branch of the Massachusetts State Police pursuant to G.L. c. 22 §9(a), on April 7, 1948.

76. On March 1, 1967 Robert D. Murgia was appointed Lieutenant Colonel, the second highest rank in the Uniformed Branch of the Massachusetts State Police.

77. Robert D. Murgia served satisfactorily in every rank and office he held in the Uniformed Branch of the Massachusetts State Police.

78. At his physical examination in March 1972, Robert D. Murgia was found to be fully qualified to continue his duties as a member of the Uniformed Branch of the Massachusetts State Police.

79. On May 8, 1972 Robert D. Murgia received a letter from the Retirement Board informing him that he would be retired on his fiftieth birthday for superannuation in accordance with the terms of G.L. c. 32 §3(a) because he had

more than twenty years of service in the Uniformed Branch of the Massachusetts State Police.

80. On July 23, 1972 Robert D. Murgia was mandatorily retired under the provisions of G.L. c. 32 §3(a) for superannuation because he had reached his fiftieth birthday.

[TITLE OMITTED IN PRINTING.]

RESPONSE OF DEFENDANTS TO REQUEST FOR ADMISSIONS

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted with the qualification that the person must also pass an agility test and an oral interview.

13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted with the qualifications that, by virtue of St. 1973, c. 925, "twenty-first birthday" should read "nineteenth birthday" and that the only variations from the age enlistment requirements were those specified in the notarized letter of John F. Kehoe, Jr., Commissioner of Public Safety, dated July 20, 1972 (agreed Documents, L)
18. Denied. The maximum age restriction has been administratively applied to women since the general entrance examination has been opened to women. That restriction did not apply when women had previously been enlisted as "policewomen" under Rule 5, 18(e) of the Rules and Regulations of the Uniformed Branch of the State Police.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted
23. Admitted.
24. Admitted.

25. Admitted.
26. Admitted.
27. Admitted
28. Admitted with the qualification that such members are subject to involuntary retirement for disability.
29. Admitted.
30. Denied. The approximate number is 12 such officers.
31. Admitted.
32. Admitted.
33. Admitted.
34. Admitted.
35. Admitted.
36. Denied. The Lieutenant Colonel and other senior officers in command positions can not be separately categorized as officers in administrative positions. For example, these officers must and do perform field functions in such cases as the maintenance and restoration of order in civil disturbances and prison disorders. The last sentence is admitted.
37. Admitted.
38. Admitted.
39. Denied. The primary duties of municipal police officers are set forth in Mass. G.L. c. 41, §98.

40. Admitted.
41. Admitted.
42. Admitted with the qualification that the last-named position has been abolished.
43. Admitted.
44. Denied. While no physical examination is specifically required for promotion, considerations as to physical capability would generally be considered during the promotion process described in paragraph 41.
45. Admitted.
46. Admitted with the qualification that the retirement benefits are those prescribed in G.L. c. 32, §26 (3)(c).
47. Admitted.
48. Admitted with the same qualification as in paragraph 46.
49. Admitted with the qualification that the full extent of such occurrences is that described in the notarized letter of John F. Kehoe, Jr., Commissioner of Public Safety, dated July 20, 1972 (Agreed Documents, L)
50. Admitted.
51. Admitted.
52. Admitted.
53. Admitted.
54. Denied.

55. Admitted.
56. Admitted with the qualification that the former group is more capable than the latter group.
57. Denied. A member's ability decreases with age.
58. Admitted.
59. Admitted.
60. Admitted.
61. Admitted.
62. Admitted.
63. Admitted.
64. Admitted.
65. Denied. There is one woman who performs the duties of a "policewoman" and one man presently serving. These two individuals are those referred to in the notarized letter of John Kehoe, Jr., Commissioner of Public Safety, dated July 20, 1972 (Agreed Documents, L).
66. Admitted.
67. Admitted.
68. Denied. The increase is significant.
69. Admitted as a description of the relevant statutory procedure.
70. Admitted.
71. Admitted.
72. Admitted.

73. Admitted.
74. Admitted.
75. Admitted.
76. Admitted.
77. Admitted.
78. Admitted.
79. Admitted.
80. Admitted.

By their attorney,

/s/

Terence P.O'Malley
Assistant Attorney
General

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

AFFIDAVIT OF JOHN F. KEHOE, JR.

I, John F. Kehoe, Jr., being duly sworn, hereby depose and say:

1. I am the Commissioner of Public Safety, the executive and administrative head of the Department of Public Safety. I have held this position since being appointed by the Governor on September 1, 1971. Under my immediate charge within the Department is the Division of State

Police, which consists of the Uniformed Branch and the Detective Branch.

2. Prior to my appointment as Commissioner, I was employed by the Federal Bureau of Investigation for twenty-nine years. My last assignment with that Bureau was as Supervisor, Organized Crime Section, Boston, Mass.

3. The Uniformed Branch of the Massachusetts State Police is mandated by statute "to provide more effectively for the protection of persons and property and for the maintenance of law and order in the commonwealth," Mass. G. L. c. 22, §§ 9, 9A. This mandate is executed principally by restoring and maintaining order in prison and civil disorders, responding to emergencies and natural disasters, patrolling highways in marked cruisers, investigating crimes and apprehending criminals.

4. The physical capability of the uniformed officer is of critical importance to the effective performance of these duties. In order to effect an arrest with the least amount of force, to rescue a drowning person, to extricate an individual from a smashed automobile, to

contain a disorderly assembly, or to perform any number of public safety objectives, a uniformed officer must be able to react swiftly and strongly.

5. On the basis of my own personal experience in law enforcement and my observation of uniformed officers responding to emergency situations, it is my opinion that younger officers are generally more capable than are older officers in performing physical functions.

6. The duties of the detectives include the investigation of crimes, the detection and arrest of criminals, the collection of evidence, and the assistance in the preparation of cases in court. While some members of the Uniformed Branch may be assigned these duties, in no event are the detectives assigned the duties of the Uniformed Branch not here mentioned.

7. In the course of an investigation, members of the Uniformed Branch may perform undercover, beard or disguise work. The detectives do not perform such work.

8. Detectives may temporarily be assigned to conduct investigations with respect to licensing functions by the

Department. Presently some are conducting investigations with respect to the licensing of warehouses.

9. Apart from the supervisory responsibilities of the Captains of Detectives, state police detectives do not perform command functions.

10. Detectives drive in unmarked cars, wear civilian clothes and are regularly scheduled to work on an eight-hour, thirty-five-minute day shift, Monday through Friday, with an additional day off every three weeks.

11. Between the dates of November, 1967 and December, 1973, no detective retired for a service-connected disability. Only one detective retired for an ordinary disability.

12. In accordance with departmental policy established by me, no leave of absence has been or will be granted which did or would allow a uniformed officer to serve in the Uniformed Branch beyond the age of fifty.

13. Since enlistment in the Uniformed Branch as a trooper, as contrasted with "policewoman," has been opened to women, the maximum age restriction of twenty-nine

has been administratively applied to women. The women presently serving in the Uniformed Branch enlisted as and perform the functions of "policewomen."

14. While the Uniformed Branch and municipal police departments seek to accomplish similar law enforcement objectives, they have distinct operational characteristics. The Uniformed Branch is a relatively small force designed to cover the entire state. As a result, a state police cruiser is generally manned by only one officer, must cover a wide geographical area and may be as much as thirty minutes away from back-up assistance in case of an emergency. On the other hand, a municipal cruiser is generally manned by two officers, must cover a limited geographical area and is generally only a few minutes away from back-up assistance.

15. The Uniformed Branch is the ultimate back-up force for the municipalities in the Commonwealth.

16. It is good law enforcement policy to assign civilians rather than uniformed officers to administrative duties wherever possible. This practice frees more

officers for field or patrol duty. For example, civilians are employed as radio dispatchers for the Uniformed Branch.

17. Police forces with higher retirement ages than that of the Uniformed Branch tend to assign administrative duties to older officers. For example, uniformed officers are generally assigned as radio dispatchers for municipal police departments.

18. The only individuals who have served beyond the age of fifty in the Uniformed Branch are those specified in my notarized letter dated July 20, 1972.

Signed under the pains and penalties of perjury this second day of April, 1974,

/s/
John F. Kehoe, Jr.

[JURAT OMITTED IN PRINTING.]

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

DEPOSITION OF DR. THOMAS ROYLE DAWBER, taken on behalf of the Plaintiff, pursuant to Notice of Taking Deposition, before Carl H. Daitch, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Moulton, Looney, Mazzone, Falk & Markham, Esqs., 15 Broad Street, Boston, Massachusetts, on Monday, February 25, 1974, commencing at 2:14 o'clock p.m.

PRESENT:

Moulton, Looney, Mazzone, Falk & Markham, (by: Gerald F. Lucey, Esq., of counsel,) 15 Broad Street, Boston, Massachusetts, for the Plaintiff.

Robert H. Quinn, Attorney General, (by: Terence P. O'Malley, Assistant Attorney General,) 373 State House, Boston, Massachusetts, for the Defendant.

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EXHIBITS

No.	Description	For Id
1	Clipping entitled "State Trooper Saves Driver Trapped in Truck in River" from the January 10, 1974, edition of the Boston Globe	16

[ALL OF THE PRECEDING NUMBERS REFER TO PLACEMENT AND PAGINATION IN THE ORIGINAL DEPOSITION.]

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of the deposition by the witness and the certification, sealing and filing thereof is hereby waived.

All objections, except as to form of questions, are reserved for the time of trial.

DR. THOMAS ROYLE DAWBER, having been duly sworn, testified as follows in answer to direct interrogatories by Mr. Lucey:

Q. Doctor, would you state your name and residential address for the record, please?

A. Thomas Royle Dawber, I live at 39 Sheridon Road in Wellesley Hills.

Q. What is your occupation, Doctor?

A. I am a physician.

Q. Will you please state your educational background for the record, commencing with your undergraduate work and bringing us through all of your internship and residencies?

A. I am a graduate of Haverford College, Haverford, Pennsylvania, with a Bachelor of Arts Degree, 1933.

A graduate of Harvard Medical School, M.D. in 1937.

[4]

I also have a Master's Degree in Public Health from the Harvard School of Public Health in 1958.

I was a career officer in the United States Public Health Service from 1938 through 1965.

I was an intern in the Public Health Service, and then had clinical training in the Public Health Service Hospitals.

I am certified as a Board Certified Internist by the American Board of Internal Medicine.

I am a Fellow of the Massachusetts Medical Society, a Fellow of the American College of Physicians, a Fellow of the American Heart Association, a Fellow of the American College of Angiology, a Fellow of the American College of Chest Physicians.

I am the author of some two or three hundred papers on various aspects of cardiovascular epidemiology, and a co-author of a book on diseases of the chest.

Do you want any statement about what I am currently doing?

Q. I will ask you that in a minute, Doctor.

Doctor, could you explain the term "angiology"?

A. It has to do with blood vessels.

Q. Doctor, are you presently engaged in the practice of medicine?

A. Yes.

I am Associate Professor of Medicine at the Boston University School of Medicine. I am head of a section in epidemiology and preventive medicine in the Evans Department of Medical Research.

I specifically conduct a study

in Framingham relative to factors that contribute to the development of coronary disease, hypertension, stroke and other vascular diseases.

I am also consultant and actively engaged in the normaltive aging study with the Veteran's Administration.

I am also consultant to the Public Health Service studying coronary diseases in Yugoslavia.

I am a consultant to the World Health Organization.

Q. Doctor, could you describe the scope of what you have referred to as the Framingham Heart Study, telling us approximately how many years it has been in progress and what it seeks to define?

[6]

A. This is a study of a general population of adults begun in 1950 in the Town of Framingham to determine what are the characteristics of those individuals who later turn out to develop evidence of coronary heart diseases, stroke and other cardiovascular diseases.

This is in a population of people who are originally well, free of any evidence of disease, what are the

characteristics of what determine the eventual outcome of these individuals.

Q. Could you tell us exactly what part you play in this study, Doctor?

A. I was Director of the study from its beginning up through 1965 as a career officer in the United States Public Health Service.

I then retired from the Public Health Service and went to Boston University School of Medicine, and because the government decided to phase out some of the activities in Framingham, I undertook, with my associates at Boston University, to raise some private funds through grants and other mechanisms to continue the actual clinical investigation; so, it is now a joint project of the National Institute of Health and Boston University.

Q. You are still actively engaged in that?

[7]

A. I am a Director of the Boston University aspect of this.

Q. In addition to the activities that you have just enumerated, Doctor, do you see patients in the practice of medicine?

A. I currently do not see any

private patients.

I spent the first twelve years of my medical career actively engaged in the clinical practice of medicine. I was Chief of Medicine at the Brighton Marine Hospital towards the end of this; so, for a number of years I have not seen private patients for a fee. I have been employed by either the government or by Boston University.

I do private consulting for insurance companies with regard to insurance underwriting, however, as to what is the risk of a disease of people with various abnormalities, and I do other private consulting, but I do not have an active private practice.

Q. Again, Doctor, you mentioned that you are an Associate Professor of Medicine at Boston University School of Medicine?

A. That's right.

Q. This is in the area of internal medicine?

A. This is in the Department of Medicine.

[8]

Q. Doctor, are you here this afternoon testifying pursuant to a subpoena

that was issued from the Clerk's Office on behalf of Colonel Robert D. Murgia?

A. I am.

Q. Are you aware of the fact that my office represents Colonel Murgia in a law suit?

A. I am.

Q. Prior to coming here today, have you had occasion to meet Colonel Murgia?

A. Yes.

Q. Was this in the context of a physical examination that you conducted?

A. Yes, it was.

Q. Will you please describe for the record in full and complete detail what the examination consisted of and what, if anything, you found?

A. I was in telephone contact with Mr. Murgia and originally has asked him to meet me in my office in Framingham where I could do a somewhat more detailed examination, such as get an electrocardiogram, and it was not possible for him to do that, and I asked him to see me in my office at Boston University School of Medicine.

Q. What date was this, Doctor?

A. It was about two weeks ago

that I saw him in my office. At that time, I asked him, first of all, questions

[9]

with regard to a medical history:

His family history indicates that his father is dead, having died at the age of 78, cause not stated. His mother is alive, she is now 78. He has two brothers, one older and one younger, who are apparently in good health.

A detailed review of systems -- of the neurologic system, cardiovascular and so on -- failed to reveal any history of any illness which he has had.

He denied specifically a number of symptoms, such as shortness of breath, chest pain on exertion, any visual difficulties, hearing difficulties or anything which I could obtain. He stated that he had lost only about four days because of illness during his twenty-four years in the State Police.

He apparently had an annual physical exam yearly, the last one being in April 1972, and he was retired in July 1972. He denied any sumptoms, either prior or after that examination, and he stated that he had not been retired because

of any physical findings on the April
[10]
1972 examination.

I then examined Colonel Murgia:

His age at the present time is 51. He appeared to me to be a man somewhat younger than 51.

He had an athletic build. He obviously is a man who has done hard physical activity and is used to a great deal of activity.

Again, there was no evidence of any defect in vision, hearing, the other senses.

Examination of his heart disclosed no murmurs, no abnormal rhythms, his lungs were clear to examination; abdomen, extremities were negative.

On this examination, which I again say was one conducted in my office without laboratory work or other added investigation, such as an electrocardiogram, the only finding of note was his blood pressure, which was slightly elevated; that is, the systolic pressure was about 145 and the diastolic pressure about 98.

On further questioning about Colonel Murgia at this time, he stated --

I specifically asked him did he realize that his blood pressure was somewhat higher than usual, and he stated on many examinations which he had had the physician had frequently measured the blood pressure and
[11]
then asked him to rest a while before the pressure was repeated, which would suggest that possibly this borderline kind of blood pressure which he shows had been present and was not something new.

At this time I would say that he was in apparently good health, that the only -- he would be on the upper level of blood pressure range for his age.

Q. Doctor, from this examination did you form any conclusions as to ghe general soundness of Colonel Murgia's health?

A. I would conclude that he was generally in good health.

Q. As a result of your physical examination of Colonel Murgia and your findings, would you be inclined to withhold your approval for his engagement or participation in any particular forms of physical activity, or would you be inclined to give general approval?

A. I would be inclined to give

general approval.

As I indicated, his blood pressure was a little up. If he were a patient of mine, I would want to see him a number of times to recheck those pressures. I would make no move with regard to those measurements at this time. I would want to see him several times and

[12]

see what his blood pressure did under several circumstances. I wouldn't be concerned about it, however.

Q. Doctor, prior to coming here today did I send some materials to you in the mail for your perusal?

A. Yes.

There was some material pertinent to the activities of the State Police.

Q. Dr. Dawber, would it be fair to say that the materials that I sent you in the mail included a copy of the Complaint on file in this case, a copy of Rule 1 entitled "Definitions", that portion of Rule 5 entitled "Duties" setting forth the duties of a "Trooper" and designated as Rule 5.14, and a copy of Rule 10 of the General Rules Applicable to Members of the

Uniformed Branch of the State Police?

A. I believe that is what I received.

MR. LUCEY. Mr. O'Malley, may we stipulate that the documents that I have mailed to Dr. Dawber, which he has reviewed before coming here today, are the same documents designated Exhibit 1, the Complaint; Exhibit 2, Rule 5.14; and Exhibit 3, Rule 10, these exhibits being the same exhibits that were marked at the deposition of Dr. Silva, which we took a couple of weeks ago?

MR. O'MALLEY. Yes.

Q. Dr. Dawber, as a result of reviewing these exhibits, which I now refer to as Exhibits 1, 2 and 3, are you generally aware that this case in which you are giving testimony involves the involuntary retirement on July 23, 1972, of Colonel Murgia from his position as Colonel and head of the Uniformed Branch of the State Police?

A. Yes, I am.

Q. Are you aware that his involuntary retirement was pursuant to a provision of the Massachusetts General Laws which requires that members of the Uniformed Branch

of the State Police retire upon attaining age 50 or upon the expiration of 20 years of service, whichever last occurs?

A. Yes, I am.

I gathered from talking to Colonel Murgia that the specific age at which people had retired had been somewhat variable, but I presume that that would relate to the time of service.

Q. That would relate to the 20 years, Doctor?

A. That is right.

Q. Doctor, on the basis of Rule 1 of the rules applicable to the Uniformed Branch of the State Police, are you aware of the fact that there are three ranks; the rank of Trooper, which includes male

[14]

members below the grade of Corporal; noncommissioned officers, which include Corporal, Sergeants, and Staff Sergeants; as well as commissioned officers, including Lieutenants, Captains, Majors, Lieutenant Colonels and Colonels?

A. Yes.

I was aware of the general military structure of the State Police.

Q. Doctor, having in mind that the

duties of a member of the Uniformed Branch of the State Police include the protection of life and property, the detection of crime and the apprehension of criminals, do you have a medical opinion as to the type of stress factors involved in these kinds of duties and the effect that these stress factors might have upon an individual?

A. Yes.

In general I am aware of the fact that the State Police may be called upon, particularly the Troopers would be called upon to perform activities which call for excessive physical exertion, also a need to be extremely alert in apprehending prisoners and so on, that these activities could produce considerable stress on individuals who might have to perform them.

There is some difference of opinion as to how much disease may result to such sudden demands for physical activity, but, in general, one would say that such activities would increase the possibility that an individual might, for

[15]

example, have a heart attack or go into sudden congestive heart failure.

Q. Would it be fair to say that these stress factors become more significant as the individual in question becomes older?

A. Yes, it certainly would.

Q. Doctor, having in mind that members of the Uniformed Branch of the State Police are also sometimes assigned to the offices of various district attorneys throughout the Commonwealth of Massachusetts for the performance of investigative duties, are sometimes assigned to other State agencies and departments, including the Attorney General's Office, the Crime Commission, Civil Defense, the New England Organized Crime Intelligence Center and the Community Assistance Program of the Governor's Commission on Law Enforcement and are sometimes assigned to the Governor personally and to other constitutional offices, do you have a medical opinion as to the type of stress factors involved in these types of assignments and the effect that these types of stress factors might have on the body?

A. I think, in general, the stress

[16]

factors would be considerably less in those activities, that they would be very little

more than would be experienced by other people in generally similar occupations.

Q. Doctor, permit me to display to you a clipping which was taken from the Boston Globe on January 10th of 1974, and I would ask that you take a look at this clipping, please, and read it to yourself.

A. All right.

Q. Have you had a chance to read that?

A. Yes.

MR. LUCEY. Subject to Mr. O'Malley's approval, I would like to introduce this into evidence.

MR. O'MALLEY. Certainly.

MR. LUCEY. May it be marked.

(Clipping entitled "State Trooper Saves Driver Trapped in Truck in River" from the January 10, 1974, edition of the Boston Globe was marked Exhibit Number 1 for identification.)

Q. Dr. Dawber, having in mind that members of the Uniformed Branch of the State Police are subject to being called

[17]

upon to act in emergency situations, such as the one described in the clipping marked Exhibit 1, as well as the possibility that a State Trooper might have to, in the

course of his duty, engage in hand-to-hand combat or take steps to quell a prison disturbance or riot or student disturbance or riot, do you have a medical opinion as to the types of stress factors involved in these demanding types of activities and the effect that these stress factors might or might not have on the body?

A. Yes.

The major physical change which occurs with sudden exertion is on the cardiovascular system. There is a marked rise in blood pressure. There is a demand on the heart, as a pump, to function at a much greater demand for blood supply throughout the body.

So, the major effect is on the cardiovascular system, and under such conditions one might expect that if the individual had coronary disease, for example, he might precipitate a case of angina, under a sudden rise in blood pressure he might have a cerebral hemorrhage.

The main effect -- what I am saying is, that it would have an effect on

[18]

the cardiovascular system.

Q. Doctor, in view of the testimony

that you have given here today and in view of the types of activities and their attendant stress factors upon the body, do you have a medical opinion as to whether it can be rationally stated that at a particular age men become physically unable to perform the types of duties or activities that a State Trooper is called upon to perform, and as a result should be retired?

A. Well, I think that very clearly the younger the individual is, the less atherosclerotic changes he has, the less changes in his arterial bed, the less so-called hardening of the arteries he has, the better the blood supply to the heart muscle; therefore, the better he is able to respond to demand.

I think there is no question that the older the individual is, the greater the risk that something might happen to him under those conditions of stress. However, this is an individual -- these changes differ markedly from individual to individual.

In order to evaluate what this risk would be, it is necessary to see the individual and to do a detailed

number of studies to assess what this
[19]
probability or risk might be. It is not possible to do it just on the basis of age, as with a group, although one would admit that at any given age in a group the higher the age the greater the risk would be.

Q. Would it be fair for me to say that on the basis of that answer, that in determining whether or not an individual is able to perform certain duties or activities that it would be appropriate to make a determination, based upon functional age as opposed to chronological age?

A. Yes.

I recognize that it has been considered practicable in many organizations to set arbitrary ages of retirement; most of those ages are usually set in the 60's, as in the military services at which 64 is -- it differs from service to service, for that matter, but is in the 60's, and prior to that time, unless the individual elects, it is based purely on a detailed physical examination, which is the only way to assess for the individ-

ual what his -- his risk of dying or his ability to carry out a given function.

Q. So once we make the distinction between functional and chronological age, then it becomes possible to make a determination on an individual basis; is that correct?

[20]

A. Yes, again with reasonable probability.

None of these test procedures are absolute, in the sense that one can guarantee how long anyone is going to live free of disease.

Q. It is possible?

A. It is possible to come up with a reasonable assessment that most people will accept.

Q. It is possible that if we gave exams on an individual basis, that it might result in a finding that as between two individuals, one age 55 and one age 45, that the individual who is older chronologically might be "younger" on a functional basis?

A. Yes.

I think that is definitely true.

Q. Doctor, do you have a medical opinion as to whether it would be medically sound to say that at some particular age, as a general rule, many men are physically unable to perform activities such as the protection of life and property, the apprehension of criminals or the detection of crime, or that the performance of such duties is so stressful to their bodies that beyond a certain age most men should not engage in or perform these types of duties?

A. It is difficult to make a specific age which one would say this is true for every one, since in any group

[21]

there will be a few individuals who even up into the 80's might be very vigorous physical individuals.

Certainly the number of people who could not perform these functions satisfactorily would increase with age, but again one could only base this on an individual assessment, not on a group assessment, in which case one would be dealing strictly with probabilities.

Q. Harkening back to your earlier testimony, Doctor, you testified you were the Director of the Framingham Heart

Study?

A. Yes.

Q. In the course of this study, have you had occasion to observe at close range individuals in, let us say, the age 40 to age 65 bracket?

A. Yes, I have.

Q. Have you ever had occasion to make any observations as to the aging of the cardiovascular system between the ages of 40 to 50, let us say?

A. Yes.

We studied people who were originally age 30 to 59 back in January of 1950, and these people are now 54 through 83.

[22]

One of the things that one is very impressed with is the rate of aging is certainly markedly different from individual to individual. One sees a certain number of individuals who begin to develop manifestations of coronary heart disease, even in the 30's. This goes up with age, and yet one may see people in the 80s who have absolutely no symptoms of heart disease, who are able to perform hard, vigorous, physical activity, who

engage in very activie sports just as well as many people in the 20;s do.

Our attempts in Framingham is to find out why it is some people develop these disorders early and some do not. We have come up with a good deal of evidence which suggests that we can, on the basis of a number of characteristics of the individual, predict the probability of developing early manifestations of atherosclerotic disease, which is one of the major factors which determines one's physical ability and one's ability to live to a ripe old age, since cardiovascular diseases is the cause of death in over half the population in the United States.

Q. Have you had any occasion to make observations which would permit you to give a medical opinion as to whether or not aging of the cardiovascular system is significant between the ages of 40 or 50 or whether it becomes more pronounced between the ages of 50 or 60 or 60 and 70 or whatever?

A. It is not possible to pick any particular age -- narrow age range in which there is sudden changes in the cardiovascular

system. We are talking about changes that have occurred really in infancy which progress gradually over time and which

[23]

proceed at a much more rapid rate in some individuals than others.

There are other facts that relate to aging than those that affect the cardiovascular system. This is such an important -- the supply of blood to organs, such as the brain, the heart -- this is such an important factor that it entirely outweighs more than anything else that one sees. There are some individuals who age prematurely because of general cellular changes, but, by and large, the biggest factor that we see which causes a disability and early death, early diseases is in the cardiovascular system; that is, there are individuals who, of course, develop arthritic changes who may live a long time disabled because of joint disease, the cause of which we do not know.

In fact, one has to say at the present time we don't know much about the cause of most of the diseases that we think of as diseases of aging, but our

present thinking is, as demonstrated from what we have determined in framingham, that age alone is not the pure factor which causes this and may not be in many instances the important factor.

It used to be thought that arteriosclerotic changes was purely a function of aging. We don't believe that is true now. We believe it is probably

[24]

a metabolic disorder which differs from person to person.

Q. Doctor, having in mind that the statutory provision by which Colonel Murgia involuntarily retired from the Uniformed Branch of the State Police requires retirement at age 50, or which, in his case, required his retirement at the age of 50, on the basis of your knowledge of the physical demands and the stress demands that might be placed upon a State Trooper, do you have any medical opinion as to the rational or rationality of auch a statute.

A. Well, I assume that the rationality of this statute is, that it is assumed that the younger the individual is, the more able he is to respond to the

demands of the job, and that as the individual gets older his ability to do this becomes less. I think that is basically

[25]

true.

On the other hand, it does seem that age 50 is a rather young age in which to arbitrarily conclude that someone is not able to perform these functions. I can understand that in any organiaation, such as in the military, in order to operate to make the system work, you must have a number of young, vigorous individuals in this system and you don't like to overload it with too many elderly people in the system, but obviously there are other functions here such as experience in the job which called for older indivuduals to be in charge of various functions and in order to get this experience obviously these individuals must be older and, therefore, I would assume that there was maybe something not completely rational about getting rid of higher ranking officers at age 50 who presumably have accumulated enough experience to make their judgments more important than possibly some

slight loss of physical ability to respond to demands.

Q. Dr. Dawber, would it be fair for me to conclude from the testimony that you have given to this point, that it is your opinion that aging is an individual matter and that an individual of a certain chronological age might, in fact, have the capabilities of a younger man, in that in a given situation a retirement system to be completely fair would be based upon a medical examination or physical examination of individuals as opposed to retirement taking place at an arbitrarily stated age?

A. Yes.

Assuming that the retirement system was based on whether or not the individual could do the job.

[26]

Q. Given your knowledge of the duties of a State Trooper or a member of the Uniformed Branch of the State Police, if it were not possible to accord a retirement system based solely upon the ability of an individual and it was necessary to designate an arbitrary age, do you have a medical opinion as to what might be a more realistic age than the one enumerated

in the statute that we have discussed here today?

A. I am most familiar with the retirement system in the military where arbitrary retirement because of age is in the 60's -- it is 64 in some of the services and 62 in others. The applicability of this is primarily to officers of higher rank, since obviously they don't have some of the physical demands of enlisted men.

If one looks at disability with age, one sees an increase with age and an increasing rate of disability when

[27]

one goes into the middle 50's or 60's or on into the 70's. There are changes which are occurring probably between 60 and 70 which are occurring at a much faster rate than occurred prior to that time.

I think that age arbitrarily decided for retirement purposes would be appropriate in the 60's.

MR. LUCEY. Thank you very much, Doctor, I have no further questions at this time.

CROSS EXAMINATION

Q. (By Mr. O'Malley) Doctor, if you were going to write a scholarly paper con-

cerning the relationship of age to physical fitness to be a State Police Officer, what kind of investigation would you make concerning the actual requirements for the State Police?

A. Requirements based on a physical examination?

Q. To determine what the physical requirements are.

A. Well, I would be interested in the general state of the health of the individual. I would be particularly concerned about the status of his cardiovascular system, and in this I would probably want to conduct a very intensive evaluation of the cardiovascular system, the changes in the pulse rate with exertion, the electrocardiogram, exercise electrocardiogram to determine whether under conditions of increasing physical demands there was any evidence of impaired coronary blood flow.

I would want tests as regards

[28]

the kidney function, which may also be a function of the cardiovascular system.

I would want certain blood studies done to determine blood cholesterol level, hemoglobin level and so on.

Q. Would you have to make an empirical study of the State Police, in particular, as opposed to an individual?

A. No.

Q. Have you made any studies beyond the review of the rules of the State Police?

A. Study pertaining to what?

Q. Pertaining to their actual physical duties?

A. No.

I am generally aware, as a citizen, as to what they do. I have not done a detailed study of that.

Q. Do you think that would be required to write a very scholarly paper on the subject?

A. Not specifically, unless one had evidence that the State Police were called upon to do heroic feats that many other individuals do not do.

I had a long association with the military, having been an officer in the Public Health Service and being on many retirement boards in the United States Coast Guard. These individuals are called upon to do all kinds of activities of a heroic nature, and I doubt that they are any less strenuous or more strenuous than

that any State Police carries out.

Q. Would mental stress factors be significant?

A. There are claims that various kinds of mental stress are productive of stress.

In my experience there is no good evidence to support this, insofar as cardiovascular disease goes; that is to say, that people who are living under stressful circumstances develop any more hypertension, any more coronary disease, any more stroke than anyone else does.

There are admittedly claims of others that this is true. In my experience we have not observed this to be a fact. We studied this in quite detail in the Framingham study and could find no evidence that this is true.

[30]

Q. For example, if an individual had a strained relationship with his wife, could that be relevant to his chances of suffering from coronary disease?

A. In my experience, this is not a factor.

Q. Would the nature of the strict discipline of the State Police possibly be factor?

A. In my experience, I would think not.

I think one has to recognize that in the State Police one has a situation similar to what one observes in the military. The military, in the peacetime, the life expectancy is better than the average population because of the selection of the individual, and I think it goes with the State Police.

Q. They are not engaged in combat, are they?

A. They are not engaged in combat where bombs are being dropped and so on, but they may be engaged in smaller, lesser wars, let's say.

I think we have to say that in any organization in which there are physical requirements to enter the organization, one gets a selective population which has a better life expectancy, a better probability of remaining free of disease than one finds in the general population.

Q. At what point would a blood pressure indicate hypertension?

[31]

A. That is a very difficult question. Blood pressure is a continuous

variable.

There is no point on the scale in which one can say that the individual goes from being normal-tensive to being hypertensive. Different levels have been used. Some physicians think that the diastolic pressure should be used, others that the systolic pressure should be used and others that both of these should be used.

Most physicians in practice are inclined to move the scale up considerably and take to pressures such as 180 systolic and somewhere around 100 diastolic as the point. Other people who wish to exclude anyone with any elevated pressure would take measures of 140/90 as a measure above which the indivdual has higher blood pressure.

Again, this is a question also of under what circumstances is the pressure taken, how many pressures are taken, has the patient been rested, is this a casual pressure, is it a basal pressure after sedation. It is very difficult; in fact, it is impossible to say that beyond a certain point someone has hypertension.

Q. Is it possible that Colonel Murgia's

blood pressure indications reflect a possi-
[32]
bility that he is suffering from hypertension?

A. Certainly his pressures are above those which one likes to see at his age. In order to assess the importance of these, I indicate that it would be necessary to do a number of repeat examinations to determine really what his blood pressure is, since the pressure I got was a casual pressure obtained as he walked in off the street into my office.

If one were to say what is the probability -- does he have a higher probability of developing excesssively higher blood pressure compared to one with a lower pressure, the answer is yes, he does have that. Just on the measurements which I made I could only make limited observations as to what that risk might be.

Q. So, in your opinion, it could be significant or it could be slight, you cannot be sure?

A. I can't be sure.

To clarify that, I am sure there are a great many people in his age range with blood pressure ranges of his

age that have resulted in no diseases in their cardiovascular system by reason of that elevated blood pressure.

Q. Would you say that he is capable

[33]

of leading the State Police into a prison to quell a riot with that blood pressure?

A. I would say that he is.

Q. Could you quantify his suffering from coronary disease as a result of it?

A. Our observations in Framingham indicate that the systolic pressure -- the upper figure -- is just as important a factor as the diastolic pressure, particularly if one is talking about developing a cerebral hemorrhage, where if the blood pressure rises you might blow out a vessel. In this case this pressure is very slightly above what one accepts as a perfectly normal pressure and would be almost average for a man of his age.

The diastolic pressure is a little higher than what one likes to see.

Q. But it is fair to say that the blood pressure that he has significantly increases his chance for suffering from a coronary disease?

A. One has to be careful in using

"significantly" when one is talking in statistical terms. I would say that it does increase his risk to a heart attack, yes.

There is no point, however, where this risk suddenly changes. It is

[34]

on a continuing curve and one can say that somebody who has a blood pressure of 120/80 is a greater risk than one who has 100/60, and, by the same token, people who have much higher than he has, are a greater risk than he is. It is on a continuing scale.

Q. Is it fair to say that this blood pressure coupled with his aging increases the rate of probability, whatever that probability is?

A. Let us say he has an average probability at age 51, yes, this would increase his risk, bearing in mind that this is one casual measurement.

In order to really evaluate that, one would need further investigation.

Q. When you say that Colonel Murgia denied symptoms, did you then conduct a test to determine exactly what the symptoms were.

MR. LUCEY. Off the record.

(Discussion off the record.)

THE WITNESS. Well, the only way to determine symptoms is to ask the subject patient specifically about such factors as; do you have any shortness of breath, that you are aware of in usual activities, if you exert yourself is the shortness of breath any greater than one

[35]

experiences normally, and so forth.

Q. Did you make him do a few pushups so that he would become short of breath?

A. I did not subject him to any physical stress.

Q. It was solely on the basis of questions ans answers?

A. Solely on the basis of a history as obtained by asking questions as to what manifestations he might have.

Q. Does Colonel Murgia smoke?

A. I do not have that -- he did not smoke in my presence. I do not have a note as to whether he does or does not smoke. That is one thing that I would like to know in evaluating his risk, as to how much of a smoker he was.

Q. That would be a significant factor?

A. Yes, it is a significant factor;

specifically cigarette smoking is a factor, pipe and cigar smoking is of no real importance in determining risk of disease.

Q. Could I ask why you did not ask that question?

A. Well, smoking, of course, is something which the individual can do or not as he chooses, and there is no -- I have no control over that.

[36]

One could tell an individual that he is a greater risk if he smokes, and that is true of anybody at any age, and he could elect to do that. Let us say one could not retire him on the basis that he smoked, I would say that his rights were being discriminated against.

Q. Doctor, when you analogize the retirement ages in the military, do you think it is relevant that the military organizations are much greater in size than, say, the Uniformed Branch of the State Police?

A. No, I don't think that is a pertinent factor.

My assumption was that in the military it was desireable that the higher ranking officers be retained in the

service beyond the ages that some of the lower ranking individuals retired, because they wished to have individuals who had experience and judgment which could be called upon to the carrying out of military activities. That was the reason that they did not call for a mandatory early retirement age in the military.

Q. What would the retirement age for the lower ranking members be?

A. Well, they can retire after 20 years and can be retired after 30 years, that is the standard. They can

[37]

elect to take a 20 year retirement or to be forcibly retired after 30 years. That is the usual procedure in most of the services of which I am aware.

Q. What would the average of enlistment be?

A. Eighteen or twenty.

Q. It is fair to conclude that most of the lower ranking members of the military must retire around the age of 50?

A. Yes.

There were some individuals who came at later ages; so, you may find Sergeants who were in the 50's or even

60's. You don't find many, because -- I would think that might be true as well in an organization such as the State Police, that those who were of value to the State Police because they had achieved a higher rank, they were people with responsibilities, whose judgment was to be called upon and I would think it is probably no more reasonable to apply the principles that apply to all enlisted individuals to them as it is in the military.

Q. You do agree that it is fair to retire the lower ranking members at an earlier age than the higher ranking members?

A. The question of fairness ---

[38]

Q. Medically sound? Substitute the words "medically sound" for the word "fair."

A. I would not be happy in using "medically sound." I would think in terms of the efficiency of the organization that one does wish to have. One does not have a military that is made up of all old men, you wish to have them made up largely of younger individuals in the enlisted ranks, because they are admittedly people with more vigor, they are willing to take more

chances than the older individuals rather than, say, an ability to carry out a specific task.

I might clarify that by saying, that during World War II, for example, we took enlisted men in the Coast Guard up to and including age 55, which meant that if those individuals remained in the service, some of them would have been 60 or above by the time they finished World War II. Obviously in recruiting people to carry on an activity of this kind, one is more desirous of getting young individuals than in getting men in the 50's for no other reason than the fact that if a man at age 55 is only qualified to carry out the duties of an apprentice seaman, he is not the best kind of guy that you would want in the military.

Q. Doctor, you say that no electrocardiogram examination was performed?

A. That is right.

Q. Do you think it is fair to make a conclusive determination as to the health

[39]

of the coronary system without it?

A. No.

Even with a resting cardiogram

one cannot do that. I would want to do a number of tests on Colonel Murgia to determine specifically the capabilities of this individual or lack of evidence of existing disease, let us say.

Q. It is fair to say that your conclusion is a rather tentative one?

A. It is tentative based on a brief examination, yes.

Q. You have testified that he is capable of leading a charge at a prison riot; is that right?

A. Insofar as what I now know about him, yes. One has to remember that any kind of examination could always be more detailed, and that a more detailed examination on anyone might disclose something which you don't know. It is always a question of what is meant by a complete examination. It is never complete. There is always something more that you could do which, if done, might disclose that the individual had some dis-

[40]

order which did not come to light. To a great extent one is influenced by symptomatology; that is, how does a person behave under conditions of stress. All I

can do is by asking questions of an individual make an assessment as to what his capabilities are.

Q. Perhaps you have already answered the question, Doctor, but why would you make a determination that Colonel Murgis is capable of leading a charge in a prison riot on what you have already described as a tentative medical opinion?

A. Simply that I say, on the basis of what I know about him, the answer would be yes.

I dind't indicate that that alone would be conclusive, but from what I was able to learn from him, chiefly by history, and in the practice of medicine the history which the patient gives you largely determines your diagnosis -- this is an important function -- one assumes that the patient is telling you the truth. If the patient is telling you the truth, a great deal of his capabilities of functioning in the world is obtained simply by talking to him.

Q. Do you find that patients are always as open about their medical history as they should be?

[41]

A. Obviously people conceal certain bits of information about them and, of course, that is always true when one is examining people for insurance or for a job and so on.

By andlarge, however, my observations are that one should take seriously what the patient says. It is an unusual circumstance in which he deliberately does not tell you the fact.

Q. He might color his answers?

A. Yes. He might color it, yes. No one likes to admit to himself that he has anything wrong with him; so, he is inclined to be maybe optimistic when he answers questions.

MR. O'MALLEY. That is all I have.

REDIRECT EXAMINATION

Q. (By Mr. Lucey) Doctor, my understanding, and let us use this for a hypothesis, is that formerly the Uniformed Branch of the State Police for the Commonwealth of Massachusetts operated on a barracks system, and it is further my understanding that they currently operate on a four days on two days off system.

If that assumption is correct, do you have any medical opinion as to whether

[42]

the barracks system would be more stressful or less stressful than the four days on two days off system in terms of physical stress?

A. I find it difficult to believe that there would be any particular difference in this.

Q. Then it would be your opinion that living in a barracks setting with certain periods of separation from family and the amenities of home life would be less stressful on a member of the Uniformed Branch of the State Police than the current system of four days on and two days off with no confinement to barracks at all?

A. Again, I think this might be an individual matter. Someone who is having marital difficulties might have much less stress in the barracks than he would have at home. Some individual who dislikes being away from his home, might be more stressed psychologically by being in the barracks.

I think these would be minor factors.

MR. LUCEY. Thank you, Doctor, I have no more questions.

RECROSS EXAMINATION

Q. (By Mr. O'Malley) Would you say Colonel Murgia is an exceptional example of a healthy 51 year old?

[43]

A. Well, I think if one were to examine 51 year old men in a cross-section of a population, one would find not too many 51 year old men who looked as young as he does and are as vigorous, at least as reported to me, in his activities as he is without any difficulty. This may be a function of having been in the State Police rather than the other way around.

Q. Could you form an opinion as to whether he would be an exceptional 51 year old State Police Officer?

A. I wouldn't believe that my capabilities in passing on State Police Officers would allow me to say that.

MR. O'MALLEY. That is all.

REDIRECT EXAMINATION

Q (By Mr. Lucey) Doctor, you have stated on direct examination that it was your opinion that Colonel Murgia was in good health. If you had to quantify this on a percentile basis, would you have any

basis for so quantifying it and could you do so if you do have a basis?

A. I think I would have to have more information to quantitate this; that is, I would say more detailed electrocardiographic studies to be able to put it on a more quantitative scale.

MR. LUCEY. Thank you.

MR. O'MALLEY. Nothing further.

(Whereupon, the deposition was concluded at 3:29 o'clock p.m.)

[JURAT OMITTED IN PRINTING.]

[EXHIBIT OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

DEPOSITION OF DR. THOMAS F. SILVA, JR., taken on behalf of the Plaintiff, pursuant to Notice of Taking Deposition, before Carl H. Daitch, Certified Shorthand Reporter and Notary Public in and for the comoonwealth of Massachusetts, at the offices of Moulton, Looney, Mazzone, Falk & Markham, Esqs., 15 Broad Street, Boston, Massachusetts, on Monday, February 11, 1974, commencing at 10:10 o'clock a.m.

PRESENT:

Moulton, Looney, Mazzone, Falk & Markham, (by: Gerald F. Lucey, Esq., of counsel,) 15 Broad Street, Boston, Massachusetts, for the plaintiff.

Robert H. Quinn, Attorney General, (by: Terence P. O'Malley, Assistant Attorney General,) 373 State House, Boston, Massachusetts, for the Defendant.

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1	Copy of Complaint from the United States District Court, together with Exhibits A and B attached thereto	7
2	Three-page document being copy of Rule 5.14 "Trooper"	8
3	Thirteen-page document being Rule 10 "General Rules"	8

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of the deposition by the witness and the certification, sealing and filing thereof is hereby waived.

All objections, except as to form of questions, are reserved for the time of trial.

DR. THOMAS F. SILVA, JR., having been duly sworn, testified as follows in answer to direct interrogatories by Mr. Lucey:

Q. Doctor, would you state your name and residential address for the record, please?

A. Thomas F. Silva, S-i-l-v-a,

Jr., 47 Shaw, S-h-a-w, Road, Brookline, Massachusetts.

Q. Your occupation?

A. Surgeon.

Q. Are you engaged in the private practice of medicine?

A. Yes, I am.

Q. In addition to your private practice, does your practice of medicine have other facets as well?

A. Yes.

Q. Will you please state those for the record?

A. My private practice is of general surgery.

[4]

For six years I have been team physician for the Boston Celtics Professional Basketball Team. For five years prior to that I was the team physician for Boston University Football and Hockey Teams.

Q. Are there any other facets of your practice that you would like to state for the record, or has what you said adequately described it?

A. I would think that that is adequate.

Q. Doctor, would you be kind enough

to state your educational background, starting with undergraduate work?

A. Tufts College, Bachelor of Science, 1948.

Tufts Dental School, Doctor of Dental Medicine Degree 1948.

Boston University School of Medicine, Doctor of Medicine Degree 1952.

Surgical residency at the University Hospital in Boston from 1952 to 1959.

Certified by the American Board of Surgery in 1960.

A Fellow of the American College of Surgeons 1962.

On the teaching faculty of the Boston University School of Medicine.

[5]

Q. What subject do you teach at the Boston University School of Medicine?

A. Surgery.

Q. Doctor, are you here this morning testifying pursuant to a subpoena that was issued from the Clerk's office on behalf of Robert D. Murgia?

A. Yes, I am.

Q. You are aware that this office represents Colonel Murgia?

A. Yes, I am.

Q. Before coming here today, Doctor, did you have occasion to make a physical examination of Colonel Murgia?

A. Yes, I did.

Q. Could you describe in detail that examination?

A. Colonel Robert Murgia came to my private office on February 5, 1974, for the purposes of being examined as to his state of health. He was found to be a fifty-one year old white male, five feet eleven inches tall, weight 190 pounds.

There was no history of having had any operations, of taking any major medications or of any hospitalizations.

Aside from reading glasses that he seldom used, his system review

[6]

was essentially negative.

The physical exam revealed that his head, eyes, ears, nose and throat were within normal limits.

There were no masses in the neck or in the thyroid gland, his lungs were clear and there was equal respirations on either side.

His heart had a normal sinus

rhythm.

A pulse of 76, a blood pressure in both arms of 138/84.

There were no abdominal masses.

There were no enlargements of any abdominal organs. There was no evidence of any inguinal hernia.

Rectal exam revealed no masses.

The extremities revealed no edema, normal pulses.

It was my impression that this was a healthy male of age 51, who I would approve for unlimited activity, physical and mental.

Q. What was the date of that physical exam, again, Doctor?

A. 2/5/74.

[REMAINDER OMITTED IN PRINTING.]

[JURAT OMITTED IN PRINTING.]

[TITLE OMITTED IN PRINTING.]

DEPOSITION of COLONEL PAUL JOHN MURPHY, a witness called for examination by Counsel for the Plaintiff, pursuant to the Federal Rules of Civil Procedure, before Richard L. Bendixen, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Commonwealth Armory, 925 Commonwealth Avenue, Boston, Massachusetts, on Tuesday, February 26, 1974, commencing at 10:30 o'clock a.m.

APPEARANCES:

Moulton, Looney, Mazzone, Falk & Markham, (By: Gerald F. Lucey, Esq., and Robert D. City, Esq., of Counsel), 15 Broad Street, Boston, Massachusetts, For the Plaintiff.

Robert H. Quinn, Attorney, (By: Terence P. O'Malley, Assistant Attorney General), 373 State Street, Boston, Massachusetts, For the Defendant.

ALSO PRESENT:

Robert L. Wise, Esq.
79 Milk Street,
Boston, Massachusetts.

Corporal Thomas L. Byrne.

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A-1	Copy of a letter dated January 6, 1971 from Francis T. Burke, Major, Bureau of Administrative Services, to Colonel Paul Murphy, M.D., State Surgeon	16
A-2	Copy of a memo dated December 29, 1970, Subject: Medical Standards for State Police Recruit Applicants.	16
A-3	Multi-page document entitled "Medical Fitness Standards for Initial Appointment to the Massachusetts State Police".	16
B	Document entitled "Check List of Medical Standards for Examination of Candidates for Trooper".	17
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D	Letter dated January 2, 1974 addressed to Mr. Terence O'Malley, Assistant Attorney General, from Sergeant Raymond H. Graves, State Police Executive Office.	43
E	Letter dated January 2, 1947 and described as containing a list of State Police officers retired for disability from 1967 through and including December, 1973	44
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[ALL OF THE PRECEDING NUMBERS REFER TO PLACEMENT AND PAGINATION IN THE ORIGINAL DEPOSITION.]

[3]

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of the deposition by the witness and the certification sealing and filing thereof is hereby waived.

All objections, except as to form of questions, are reserved for the time of trial.

COLONEL PAUL JOHN MURPHY, a witness called for examination by Counsel for the Plaintiff, having been duly sworn, testified as follows in answer to direct interrogatories by Mr. Lucey:

Q. Colonel Murphy, will you state your name and address for the record, please?

A. Paul John Murphy, 2 Hawthorne Place, Boston, Massachusetts.

Q. How old are you?

A. Thirty-nine.

Q. And would you please state your educational background commencing with undergraduate and through and including medical school?

A. Harvard College, Harvard

Medical School and then a five-year surgical training resident program at Boston City Hospital.

[4]

Q. And what year did you graduate from Harvard College?

A. 1955.

Q. And what year did you graduate from Harvard Medical School?

A. 1960.

Q. And when did you complete your residency?

A. 1965.

Q. And, again, that was at what hospital?

A. Boston City Hospital.

Q. Was that -- Do you have any other internships orresidencies?

A. No, that would be one single program.

Q. Are you certified by any medical or professional boards?

A. I did not take my boards, no, in surgery.

Q. And do you specialize in any area of medicine?

A. I'm basically an administrator.

Q. And are you a member or fellow of

any professional associations?

A. Military Surgeons of the United states in one. There may be some others, but I don't recall them off-hand.

Q. Okay.

And you aren't currently teaching at any medical schools or anything of that nature?

A. No, I'm a former instructor in surgery at Tufts University Medical School, but I'm not currently an instructor.

Q. And over what period of time were you an instructor at Tufts?

A. That would have been 1959 through 1960, '61, approximately in that area.

Q. And in what area did you give instruction?

A. Surgery.

Q. Surgery?

A. Right.

Q. Having in mind, Colonel, that you graduated from medical school in 1960 and completed your residency in 1965, would you state what you have been doing professionally since 1965?

A. Well, basically what I've been doing has been reviewing medical fitness

standards for, I'd say, all military personnel; for the past four years, the State Police.

Q. Well, stated another way, what did you first do after completing a residency at Boston City Hospital? Did you then get a job somewhere?

[6]

A. No, I have always been self-employed.

Q. Self-employed?

A. Right.

Q. And what was that employment?

A. Well, I should change that a little bit. I have been, basically, acting as a State Surgeon. I was appointed as a State Surgeon in 1969, but I have been acting as a State Surgeon since 1964.

Q. Okay, and as State Surgeon, is your title Surgeon General of the Commonwealth of Massachusetts?

A. It depends upon which chapter of the law you read. Under Chapter 32 it's State Surgeon General; under Chapter 33 it's State Surgeon.

Q. Okay.

And you were appointed State Surgeon in 1965 and you have been

serving --

A. No, 1969.

Q. 1969; and you have been serving in that capacity in the interim?

A. That's correct.

Q. And in addition to being State Surgeon, do you have any other professional duties?

A. Yes, I', also State Police Surgeon, which is a separate title. I am the Medical Consultant to the Commission of Veterans Services for the Commonwealth of Massachusetts.

[7]

Q. And when did you become State Police Surgeon?

A. 1970.

Q. And was this be appointment or --

A. I don't understand the question.

Q. Well, are you appointed State Police Surgeon or is it like a job that you apply for?

A. That is a job that comes out of the 03 Account.

Q. It would not be a Civil Service job?

A. No.

Q. And, Colonel Murphy, are you here

testifying today pursuant to a subpoena issued from the Clerk's Office of the United States District Court for the District of Massachusetts?

A. That is correct.

Q. And are you aware of the fact that I'm associated with a law firm that presently represents Colonel Murgia in litigation pending before that court?

A. That is correct.

Q. And are you presently aware that the law suit brought by Colonel Murgia involves his involuntary retirement on July 23, 1972, from his position as Colonel and Head of the Union Branch of the Massachusetts State Police?

[8]

A. No, I do not agree with that statement.

Q. Well, could you please tell me what your understanding is of Colonel Murgia?

A. You said his "involuntary" retirement; I would prefer to use the word "mandatory" retirement.

Q. Thank you.

What is the rule, Colonel Murphy, with respect to mandatory retirement of

State Police officers, or what is your understanding?

A. My understanding of the State Police retirement is that they are eligible for retirement after 20 years of service or attaining maximum age, which is 50. There may be an exception with someone with broken service who would then go beyond age 50 to get his 20 years to be eligible for some sort of annuity.

Q. And in Colonel Murgia's case, under which decision did he retire?

A. My understanding is that he went to the maximum age, which is 50.

Q. Now, Colonel Murphy, would you please state for the record your duties as Surgeon General of the Commonwealth of Massachusetts as they relate to the State Police only?

A. Well, as Surgeon General, the only way they relate to the State Police would be as president of the State Police Disability Retirement Board.

[9]

Q. And what is required of you in the execution of this duty?

A. Anyone who applies for a disability retirement is referred to the

Retirement Board, which consists of myself, the Commissioner of Public Health and the Commissioner of Public Safety, or his designated representative. We, in turn, will examine the application for disability retirement and make a determination whether or not we recommend the individual be retired on a disability basis.

Q. And how does retirement on a disability basis differ from mandatory retirement on a non-disability basis?

A. Disability retirement, they have 72 percent of their salary as opposed to the average retirement which would be 50 percent after 20 years, one percent for each year they serve after that.

There is also a restriction on disability retirement in that they cannot earn more than $1,000 more per year than they were earning at the time they were fully employed.

Q. Now, Colonel, would be kind enough to state for the record your duties as State Police Surgeon?

[10]

A. Right, my primary duty as State Police Surgeon would include, A, determining whether or not an individual

meets the requirements for reinlistment, in other words, for full duty; and, secondly, when someone is injured or is ill, determining whether they should be returned to a full duty or a so-called light duty status.

Q. Would you please describe what is meant by a full duty status?

A. Full duty status means that he is able to perform all duties required of a State Police officer.

Q. And would you please describe what is meant by a light duty status?

A. That primarily involves desk duty.

Q. Now, do you have any additional duties as State Police Surgeon?

A. Yes, I also sit as a member of the Board of Claims.

Q. And are there any duties that you have omitted to mention that is --

A. As far as the State Police go?

Q. Yes, sir.

A. That would be the extent of my association with the State Police.

Q. And this is the extent then of your association with the State Police --

A. -- State Police Surgeon.

[11]

Q. Okay.

Would it be fair to say that you have no connection with the State Police in a medical capacity other than primarily as State Police Surgeon and, secondarily, as --

A. And Disability Retirement Board.

Q. And the latter is secondary type of capacity as Surgeon General of the Commonwealth?

A. Right.

Q. Now, Colonel Murphy, are your duties as State Police Surgeon set forth in any statute or any set of rules and regulations that you can refer me to?

A. Yes, you have the rules and regulations of the State Police.

Q. And would your duties be set forth in a particular segment of those rules and regulations, or would they be scattered throughout?

A. There is one section I'm aware of where they mention it briefly. Whether they are scatterd throughout, I don't know, because I have not memorized all of the rules and regulations.

Q. I can't understand that.

Would one of your duties, Colonel, be set forth in Rule 7.4 of the rules applicable to Massachusetts State Police?

[12]

A. Without seeing the rules and regulations, I can't answer the question.

Q. Maybe I could elaborate further.

That rule deals with the physical examination for applicants to the State Police who have passed the medical exam.

A. That's correct. I know the one you are referring to now, all right, that is correct.

Q. And do you have some duty in connection with applicants to the State Police force?

A. Yes, we do.

Q. And what would that duty be?

A. Examine all of the applicants who pass an agility test and written examination, and we determine whether or not they meet the medical fitness standards which were approved by the Commissioner of Public Safety.

Q. Now, Colonel Murphy, do you as State Police Surgeon prescribe the medical fitness standards that all applicants to the State Police force must meet?

A. I submitted them to the Commissioner of Public Safety. He, in turn, approved them.

Q. He approves them?

[13]

A. Correct.

Q. And would you have a copy of these medical fitness standards?

A. I believe Corporal Byrne has a copy down there.

I'll make sure it's complete.

We are missing one piece of paper.

MR. BYRNE: The letter?

MR. O'MALLEY: We'll go off the record here while we are straightening out the records.

(Discussion off the record)

A. All right, this is a copy of the standards that we used.

MR. O'MALLEY: Back on the record.

Q. Let me have a few moments to look at these, please.

MR. O'MALLEY: Off the record.

(Discussion off the record)

MR. LUCEY: I will correct it with a new statement.

Q. Now, Colonel Murphy, in connection with the question I asked a few moments ago concerning physical examinations for applicants to the State Police force and in which I made reference to a Rule 7.4, I show you a document which purports to set forth Rule 7.4 and ask you if that is an accurate statement of the rule.

[14]

A. That's correct, but this is basically a restatement of what I said, which is, "The examination shall be to the extent prescribed by the State Police Surgeon and approved by the Commissioner." That would mean the Commissioner of Public Safety.

Q. Just to clarify the record, Colonel, would you be kind enough to read Rule 7.4 into the record?

A. (Reading) If the applicant passes a mental examination, he is then required to pass a physical examination. This physical examination shall be in such manner and to such extent as may be prescribed by the State Police Surgeon and approved by the Commissioner. If the applicant fails to meet the requirements of such physcial examination, he

will not be considered eligible for enlistment. The Commissioner may, however, in his discretion waive any physical or mental disqualification. (end reading)

Q. Thank you.

Now, a few seconds ago, Colonel, you handed me 23 pages of materials which purport to be the medical fitness standards applicable to applicants to the State Police force. Now, in looking through them I've noticed that there are some line-outs and some insertions. Would you be kind enough to explain --

[15]

A. Certainly.

Q. -- how a line-out might have occurred or insertion?

A. Shortly after I became State Police Surgeon there was a new group of applicants. At that time there was only a single page of medical requirements, which I felt were inadequate, and I had recommended to the Commissioner that we establish not necessarily more rigid but more definitive medical qualifications, and the basic qualifications that are in that document that you have there are the same as those for an individual who is

to undergo basic training at a military installation. So most of those pages are taken directly out of an Army regulation, and that is why there are no line-outs. Time is short, so we didn't retype the whole thing, we just reproduced them.

Q. Fine, and this was adapted then for State Police purposes from the military?

A. Correct.

Q. So what we have here is, in substance, the accurate statement of the physical standards?

A. Those are the current physical standards.

Q. Okay.

MR. LUCEY: May those items be marked?

(Copy of a letter dated January 6, 1971 from Francis T. Burke, Major, Bureau of Administrative Services, to Colonel Paul Murphy, M.D., State Surgeon, was marked Exhibit A-1).

[16]

(Copy of memorandum dated December 29, 1970, Subject: Medical Standards for State Police Recruit Applicants, was marked Exhibit A-2.)

(Multi-page document entitled "Medical Fitness Standards for Initial Appointment to the Massachusetts State Police" was marked Exhibit A-3.)

Q. Now, Colonel, in 1969 you became State Police Surgeon?

A. No, State Surgeon '69, State Police Surgeon 1970.

Q. State Police Surgeon in 1970?

A. That's correct.

Q. And you have testified that at the time you became State Police Surgeon the medical fitness standards were not as complete and as definitive as you would like to see them?

A. That is correct.

Q. Do you have in your possession a copy of the Medical Fitness Standards that obtained prior to 1970?

A. I believe I do; and, if you will excuse me a minute, I think I can get them.

Q. Okay, or we can just --

A. It will only take a minute.

[17]

Q. Okay.

(Deponent left room and returned)

Q. Now, Colonel, you have handed me

a document entitled "Check List of Medical Standards for Examination of Candidates for Trooper". Does this document reflect the medical fitness standards that obtained prior to 1970?

A. It is my understanding that that is the standards that they had.

MR. LUCEY: May this be marked?

(A document entitled "Check List of Medical Standards for Examination of Candidates for Trooper" was marked Exhibit B.)

Q. Now, Colonel, where is the physical examination for applicants to the State Police force given?

A. They're given right here, 925 Commonwealth Avenue.

Q. And by whom are these physical examinations conducted?

A. They were conducted by approximately 30 medical officers who are members of my staff in the 114th Medical Battalion.

Q. And these would be reserve medical officers in the National Guard?

A. These would be medical officers in the National Guard, that is correct.

[18]

Q. And these physical examinations

would be conducted under your supervision?

A. That is correct. The basic procedure is that they would go -- We did approximately 1,000 examinations just a short time ago. The individuals were examined and then everyone that was examined, his examination was then reviewed by me to be sure it met the standards that we had established under the approval of the Commissioner.

Q. Now, Colonel, would you be kind enough to describe for me what this initial examination for applicants to the State Police force consists of? Now be as specific as you can.

A. Well, if I may refer to --

Q. Please do.

A. All right, to do the portions of it which are not relevant to the --

Q. If I could interrupt, please, state for the record what document you are referring to.

A. I'm referring to the reports of medical examination.

Q. And does that have a form number designation?

A. The one that was utilized for candidates was a state for, but it was

adapted from Standard Form 88, which is a federal form, and there is also a Standard Form 93, federal for. The 93 consists of a medical history, The individual must first complete the 93; then the items on the report of medical examination that are required, working rather backwards in getting the part that are done by technicians first, we have a urine examination, a blood serology, chest x-ray, audiometric examination, color vision, near vision, distant vision, blood pressure, pulse, height, weight, color hair, color eyes, body build, and then the examining physician is required to examine for any defects.

Do you wish me to list all of the things examined?

Q. Please do.

A. All right, head, face, neck and scalp, nose, sinuses, mouth and throat, ears, eardrums, eyes, ophthalmoscopic, pupils, ocular motility, lungs and chest, heart, vascular system, abdomen, viscera, anus and rectum, endocrine system, G-U System, upper extremeties, feet, lower extremeties, spine, identifying body marks, skin-lymphatics, neurolocic and

psychiatric.

Q. Now, Colonel, what would an examination -- Strike that.

What type of an examination would be conducted with respect to lungs?

[20]

A. You would have two examinations of the lung. One would be percussion auscultation; the other would be chest x-ray.

Q. And what type of an examination would be conducted with respect to the heart?

A. Auscultation.

Q. And could you elaborate on that for a layman, please?

A. This is primarily where you listen to the heart, you are looking for any murmurs or any irregularities in rhythm, this type of thing.

Q. And what type of an examination would be conducted of the cardiovascular system?

A. Your opthalmoscopic is probably your most important in this respect: in that you then can look at what the arteries and veins look like, but you also would get some idea just by an examination

of the extremeties, pulses, this type of thing, skin temperatures.

Q. All right.

No electrocardiograms?

A. Electrocardiograms -- Now we are talking applicants?

Q. Yes.

A. An applicant is under 40; therefore, there would be no electrocardiogram, unless indicated.

As a matter of fact, let me clarify that a little bit, there were some applicants that we did do electrocardiograms on because there was a question of irregularity of their heartbeat or something like this, so an EKG was done.

Q. And this irregularity was done by listening to the heart in the preliminary stage --

A. Right.

Q. -- examination?

A. Right.

Q. What kind of things are revealed by an electrocardiogram examination?

A. An electrocardiogram will basically show you an abnormality if it exists at the time you do the electro-

cardiogram. It will not predict the future. It may show you a past history of a cardiac disease, it normally will show you a current history. It will not show you a future history and will show you what we call arhythmias or irregular beats.

Q. Now, Colonel, would you please tell me what types of diseases, defects or physical conditions will cause an applicant to fail the initial physical fitness examination?

A. Well, I would have to go through all of the 20 some-odd pages of that document that you have there.

[22]

Q. Well, could you give us the more common types of --

A. The most common ones that we ran into several months ago were vision, height, and color-blindness.

Q. Now, if an individual passes this initial physical examination, are these records kept somewhere in his files?

A. They are turned over to the Personnel Office at the State Police.

Q. And they became a permanent part of the individual personnel or medical

history?

A. That is my understanding.

Q. Now, Colonel, Rule 7.4 provides that if an applicant fails to meet the requirements of the initial physical examination that he will not be eligible for enlistment, but the rule further provides that the Commissioner may in his discretion waive any physical or mental disqualification.

What procedure must an applicant follow to secure a waiver of a physical defect?

A. In the four years that I have been a State Police Surgeon, no waiver has been granted for an applicant.

Q. Do you have any feel for or idea of the situation with respect to waivers of initial physical examination defects prior to your becoming State Police Surgeon in 1970? Would you --

[23]

A. Having no experience with it, I really couldn't comment on it.

Q. Have any applicants who have failed the initial physical exam filed for waivers since you have been State Police Surgeon?

A. Yes.

Q. And what types of defects would these individuals have or might they have?

A. Again, coming back to the most common ones, height, vision and color-blindness.

Q. But, again, these have not been waived since you have been State Police Surgeon?

A. No.

Q. And would you be consulted by the Commissioner if a waiver were to be granted to an applicant?

A. In many cases he would ask me to do a re-examination, which we would certainly do.

Q. But no written standards obtain to --

A. The same standards which still apply.

Q. Now, Colonel, are you aware of the mental examination that is given to applicants to the State Police force?

A. You mean have I ever seen it?

Q. Well, are you aware of what it consists of?

[24]

A. No, I am not.

Q. So you wouldn't be able to

describe that for me today in any sort of detail?

A. No.

Q. Now, Colonel, are you generally familiar with the duties of the members of the Massachusetts State Police?

A. I would say that I could answer that very strongly "yes".

Q. Permit me to show you a document entitled "A Career With the Massachusetts State Police". More appropriately, I should describe it as a promotional flier aimed at informing applicants who might be interested in applying to the State Police of what the duties and the requirements of the job are.

Let me call your attention to the paragraph entitled "Troopers' Basic Duties" and ask you to read it and tell me if that adequately and fully describes the duties of a State Police Trooper.

A. Yes, I would modify it in only one respect by saying that that is the general outline of duties of all State Police officers.

Q. Let me see if I am correct in my understanding.

This paragraph describes not only

the basic duties of a State Trooper but the basic duty of any member of the Uniformed Branch of the Massachusetts State Police?

[25]

A. Correct.

MR. LUCEY: I would like to introduce this and have it marked.

(A document described as a promotional flier entitled "A Career With the Massachusetts State Police" was marked Exhibit C.)

Q. Now, Colonel, having in mind that you testified that this paragraph in Exhibit C entitled "A Trooper's Basic Duties" adequately describes the duties of a State Policeman, do you have a medical opinion as to the types of physical stress factors that are involved in the performance of these basic duties?

MR. O'MALLEY: I am objecting to the form of that question.

MR. LUCEY: Okay, could you read it back, please?

(The pending question was read back by the Reported.)

MR. O'MALLEY: Off the record.

(Discussion off the record)

MR. LUCEY: Let's strike the question; I'll give it again.

[26]

Q. Colonel, on the basis of your general knowledge of and familiarity with the duties of members of the Uniformed Branch of the Massachusetts State Police, do you have a medical opinion as to the types or the nature of physical stress factors involved in the performance of these duties?

A. Well, again, I have to come back to and say the forms of these duties. Which duties are you referring to?

Q. The whole gamut of duties that a State Trooper must be constantly ready to perform, ranging from --

A. All right, now are you asking me do I have a medical opinion? A medical opinion in what respect?

Q. In other words, are the types of duties that a State Trooper must necessarily be ready to perform at any given moment on duty, and, I suppose, even off the duty; are these types of duties very demanding and to they tax the body in specific ways, or are they really no more stressful than the duties, let's say, of

a milk delivery man?

A. I would say the duties are definitely more stressful than those of a milk delivery man; and because of the nature of the State Police, they are more stressful than you local Police Department.

[27]

Q. Okay.

Now, could you please tell me in what ways are the duties of a State Policeman physically stressful?

A. All right, number one, a State Policeman generally works alone. This is as opposed to most of your municipal Police Departments where they work together. It is a small force covering the entire state as opposed to -- if you take the Boston Police Department of approximately 2,100 or 2,300 covering a smaller area. Therefore, you have already the mental stress of knowing that you do not have immediate backup.

The State Police is, as you note in the exhibit that you entered into evidence, the backup force. He is the one that is called on in riots, or he is the one that is called on when you have a problem as you did at Walpole or Norfolk.

These are both physically and mentally stressful. It is a State Police officer who is the one that is apt to be out on Route 495 with an accident at 2:00 o'clock in the morning and there is no one around. There is both physical exertion involved here and mental stress. These are the types of things that I am looking at.

Q. Proceeding from the mental stress aspects of the job and concentrating on the physical exertion that you have referred to, do you have any medical basis or have you made any observation which would bear out the hypotheses that the physical stresses on a State Policeman cause physical deterioration at a more rapid rate or of certain aspects of the body more so than would be the case if an individual were not a State Policeman?

A. Yes, I do.

We have approximately 200 State Troopers between the ages of 40 and 50. In that age group there are 23 with hypertension, which is a figure that is rounded off to 10 per cent. This is twice what you would expect in the normal population. When you consider this is a pre-selected group and that none of them

should have had hypertension when they came on the job, I think it's fair to presume that there is definite stress on the cardiovascular system.

Q. Would it be fair to say that no individual with hypertension is passed in the initial physical examination?

A. In the period of time that I have been associated with the State Police that would be a definite statement. I cannot speak prior to that because I don't know.

[29]

Q. Now, do you have a medical opinion as to what particular aspects of a State Policeman's duties are stressful to the cardiovascular system? In other words --

A. My medical opinion on that would be it is probably more emotional than physical in terms of the effect on the cardiovascular system.

Q. So might it be fair to say then that an annual mental examination might be more relevant in terms of insuring that State Policemen do not develop cardiovascular problems than would be a physical exam?

A. If you go back to my testimony

on part of the examination, it includes mental status evaluation.

Q. But is the mental examination only a part of the initial exam for the applicants, or is it also a part of the annual physical exam?

A. It is part of their re-inlistment examination for those under 40. That is every two years. Age 40 on, it is annual.

Q. On the basis of your testimony, Colonel Murphy, would it be fair to say then that the stress factors that are most significant in the duties of a State Trooper are mental stress factors, even though these stress factors might manifest themselves in physical problems?

A. No, I think you have to look at two aspects here.

[30]

I was pointing out that there is a very strong mental stress factor, but there is also the requirement of physical strength.

Q. But is this requirement for physical strength any greater than the requirement of physical strength, to use the example that you used of a few moments

ago, of a member of the Boston Police Department?

A. Yes.

Q. And in what way is the requirement for strength greater on the part of the State Policeman than it would be on the part of a member of the Boston Police force?

A. Because he usually is working alone; he does not have assistance.

Q. Now, Colonel,you have mentioned in addition to the initial examination for applicants, a re-inlistment physical and, also, an annual physical for members of the State Police force after they have reached the age of 40. Would these then be the three types of physical exams?

A. Correct.

Q. And there would be no others that a State Policeman would take in the ordinary course?

A. He may have a physical on his own with his own physician.

[31]

Q. These would be the official physicals we are talking about?

A. Those would be the officials, correct.

Q. Would you please tell me what a re-inlistment physical consists of?

A. It consists exactly of what I gave earlier as the initial physical, with the exception of we do not repeat the entire history, we only take an interim medical history.

Q. And would the same be true then of the annual physical after 40?

A. No, the annual physical has in addition an electrocardiogram and tests for any gastrointestinal bleeding.

Q. And what is the test used to determine whether there is gastrointestinal bleeding?

A. You take a stool test and take a pill, a tablet, that we call hematest.

Q. Now, where is the re-inlistment physical given and by whom is it given, Colonel?

A. They are given by the same medical officers that I mentioned earlier.

Q. And the same would be true with respect to the individuals who have reached 40?

[32]

A. Correct.

Q. Now, what particular things to you

look for in the re-inlistment physical?

A. Basically what you are looking for is any physical defect of any type. Now, if you find a physical defect, then the question you have to ask is: "Does this impair his duties and functions as a State Police officer?"

Q. What particular things do you look for in the annual examination that is given to members over 40?

A. Again, basically the same thing, any defect; and I would like to emphasize here that history is just as important as the examination itself.

Q. Now, Colonel, do the same standards apply in the re-inlistment and the annual physicals in terms of what might disqualify a State Trooper from being certified as able to perform his duties?

A. No.

Q. How does the initial -- Or how do the re-inlistment and the annual physicals after 40 differ from the initial physical in terms of standards?

A. All right, two ways.

Number one is, as I mentioned, any medical defect. Then you must determine whether this particular defect is

[33]

going to affect his duties as a State Police officer. If it is felt that they would, then he would wind up on a waiver and/or a light duty status.

Q. Now, who makes the determination as to whether or not a particular individual meets the physical standards?

A. I do.

Q. And this would be based upon a review of the medical records that are presented to you by the examining physician?

A. I would take the medical records and then I would also interview the individual.

Q. And might you conduct a further physical examination?

A. I might, correct. Generally, what I do is refer him to his own physician if it is not related to the job.

Q. What types of defects would be pertinent in determining whether or not a trooper is physically fit to re-inlist or to meet the standards after age 40?

A. After age 40?

Q. Would there be two different --

A. There are two different types.

One, you might have a temporary condition, which I believe we do have a listing here, such as a hernia. Now, that is a repairable condition. But as long as he's got the hernia, he's not capable of performing the full duties of a State Trooper because we now get into the problem of the physical aspect of it; in other words, he shouldn't be doing heavy lifting.

[34]

Then we have -- We have another type which woulc be, again, coming back to the cardiovascular system, hypertension, where he shouldn't really be exposed to stressful situations.

Q. Could you please tell me what you mean by hypertension and how it manifests itself?

A. Yes.

Hypertension is not one elevated blood pressure reading, it is persistent elevation of the blood pressure.

It also manifests as it progresses by changes in the eyebrow, which is what you see in the ophthalmic system. The first thing we get is A.V. nicking, anuria venus nicking.

There may be electrocardiographic

changes indicating left ventricular hypertrophy.

It is also manifest clinically by such things as headaches, nose bleeds, a light-headed feeling, and I believe I can go on for several more pages if you wish.

[35]

Q. That's good enough.

Would it be fair to say then that the re-inlistment physical is designed to determine conditions which would interfere with the performance of duty by a police officer?

A. Correct.

Q. And is there then a determination made as to whether this condition is temporary or permanent?

A. Correct.

Q. And are there any written standards or rules and regulations which pertain to the making of this determination?

A. No.

Q. Is there a list or is there set forth in any written document a list of those standards or those conditions which are determined to be temporary or repairable and those conditions which are

determined to be permanent?

A. Any medical book will tell you that.

Q. Could you please state for the record some conditions which are encountered in the physical examination of State Troopers which you determined to be common to the job, yet temporary?

A. Well, I gave you the most common one, which is a hernia.

[36]

Q. And I believe you mentioned hypertension as well.

A. I consider hypertension to be one that is permanent, provided the diagnosis is correct.

Now as I started to say earlier, you don't make the diagnosis in one blood pressure reading and when we get an elevation blood pressure, the individual is then referred to his own physician, is hospitalized, has the appropriate tests and either the diagnosis is confirmed or not confirmed.

Q. Are there any conditions other than a hernia which are frequently encountered in the State Police population which you would term temporary?

A. Frequently encountered?

Q. Or common or sometimes encountered. Why don't you state the characterization which is most appropriate and state the condition.

A. Yes.

Q. In other words, I'm interested in determining what other conditions --

A. You could have a ruptured disc, which you see very commonly -- well, let's not say "very" commonly, you see it commonly; knee injuries, all of which can be repaired by surgery and when the individual recovered he then goes back on full duty. Those are two that come to mind immediately.

[37]

Q. And if in the case of a knee injury for which the prognosis was good or a ruptured disc for which the prognosis was good and the condition did not improve and, therefore, turned into a permanent disability impairing the trooper's ability to perform, would some mechanism be set in motion which would change the classification from a temporary disability to a permanent disability?

A. He would be retired.

Q. Now, in addition to hypertension, what other types of permanent disabilities might one expect to find in the general population of State Police officers?

A. Generally we'd be talking in the areas of injuries, and this could be anything because most of the injuries are the result of cruiser accidents, and it could be a frozen shoulder, which is one case I can think of off-hand, back injuries, knee injuries, any injuries to the joints, bad head injuries.

Q. And these, again, would result in the individual troopers being retired with disability --

A. If there is a permanent disability, he would be retired, that is correct.

Q. Now, Colonel, approximately how many members are there in the Uniformed Branch of the State Police Department at the present time?

[38]

A. Approximately 860.

Q. And do you know, and feel free to say no if you don't know, do you know whether the physical examination that is given to members of the Detective Branch

is the same as that given to the members of the Uniformed Branch?

A. I do not believe the members of the Detective Branch have any physical examination other than their initial one.

Q. So it is your belief then that there is no re-inlistment examination requirement or annual physical requirement --

A. That is my understanding.

Q. Now, Colonel, you have mentioned the term"waiver" or "medical waiver". What do you mean by that?

A. What a waiver is, basically is, is if on examination we find phusical defect, it is at the Commissioner's discretion to waiver him, and I do not get into the waiver beyond that point. All we do is make a report, and the Commissioner decides what he is going to do.

Q. Okay.

So my understanding then is that a trooper takes his re-inlistment or over-40 annual physical examination and then, if a defect is found, a report of this defect is made to the Commissioner, whether the defect be temporary or permanent.

[39]

A. Correct.

Q. And the Commissioner takes action upon that.

A. Correct.

Q. Is there a form used to convey to the Commissioner that a defect exists?

A. It is sent over on what we call a buck slip, the man's name, what the defect is, and we not whether it's temporary or permanent.

Q. So it's an informal type of communication.

A. Informal type of communication, correct.

Q. And do you know if there are any written standards or criteria by which the Commissioner makes his determination as to whether to waive a temporary or permanent defect?

A. Not to my knowledge.

Q. Have you, since your tenure as State Police Surgeon, been requested by the Commissioner to provide him with any advice or standards or criteria which he might implement in making his decision with respect to temporary or permanent disability waivers?

A. I have been requested in terms of being asked whether or not an individual whould not be requested to retire. As far as the temporary disability goes, that really should be no problem.

[40]

Q. So would it be fair to say then, in terms of temporary disabilities such as hernias, the Commissioner had discretion as to whether or not to permit the individual to serve under a waiver; is that true?

A. Correct.

Q. And would it be further fair to say that he generally does permit an individual with a temporary disability to serve?

A. Correct.

Q. Can you recall an instance when the Commissioner has not permitted an individual with a temporary disability to serve under a waiver?

A. Well, in that I don't know whether or not he grants all of the waivers, all I can give you now is hearsay, which is to my knowledge, he has not signed waivers -- it's either four or six people recently.

Q. And this would be the case --

A. But this is only hearsay.

Q. And this would be to your understanding in a case of a temporary disability?

A. No, these are permanent disabilities.

[41]

Q. To your knowledge, since your tenure as State Police Surgeon beginning in 1970, has the Commissioner permitted any individual with a temporary disability to serve?

A. Yes, he has.

Q. Can you tell me in approximately how many instances this has taken place?

A. I think if we take the --

Do we have that list? I think I can come up with a pretty accurate figure.

We would be talking in the neighborhood of 10 to 12 people.

Q. I'm sorry, I didn't get that.

A. Approximately lo to 12 people, from that list.

(SHORT RECESS)

MR. LUCEY: Would you read back the last question?

(Testimony read back)

MR. LUCEY: I think I'd better clarify that.

Q. Let me ask one more question. To your knowledge, since your tenure as State Police Surgeon commencing in 1970, has the Commissioner permitted any individual with a permanent disability to continue to serve?

A. All right, the 10 to 12 people that I am talking about are those that are currently serving. So the answer would be "yes".

[42]

Q. Okay, fine.

Now, can you tell me how many members presently serving with the Uniformed Branch of the State Police are serving under waivers of temporary or permanent physical defects?

A. That is the 10 to 12 figure we were talking about.

Q. And you have handed me a letter dated January 2, 1974, addressed to Mr. Terence O'Malley and containing a list of officers assigned to the Uniformed Branch of the Division of State Police who had waivers on disqualifying physical defects in connection with re-inlistment during

the calendar year 1973, and I show you that letter and ask you what that list represents.

A. Well, this would indicate individuals who during the year 1973 we found some type of defect, whether it be permanent or temporary. In several of the cases that are listed here it was a temporary defect and, in some cases, has already been corrected. In other cases it is permanent. I do not know whether or not all of the individuals listed on here have been waivered by the Commissioner.

MR. LUCEY: May this be marked?

[43]

(A letter dated January 2, 1974 addressed to Mr. Terence O'Malley, Assistant Attorney General, from Sergeant Raymond H. Graves, State Police Executive Office, was marked Exhibit D.)

MR. CITY: For the record, the parties stipulate and agree that the names of the individuals are deleted but that they are actually persons serving in the Division of the State Police. Should the court require, we would make

the names available to the Court.

MR. O'MALLEY: One qualification: on the word "presently" serving, some may have been retired.

THE WITNESS: I think we can say some have been retired.

Q. Now, looking at Exhibit D, Colonel Murphy, could you please tell me which physical defects on that list are considered temporary and which are considered permanent?

A. Yes, the ones that are considered temporary were the hernia, the one that is listed as GI bleeding, and one listed simply as injury. This is a trooper that was involved in a cruiser accident but is progressing.

Q. And would it be fair to say then that the others are considered by you to be permanent disabilities?

A. Correct.

[44]

Q. And they would be hypertension, diabetes, angina pectoris, one kidney and myocardia?

A. Myocardia infarction is what that stands for, that is correct.

Q. Thank you.

Now, I show you a second list dated January 2, 1974, contained in a letter to Mr. Terence O'Malley and ask you what that list represents.

A. This is a listing of State Police officers retired for disability from 1967 through and including December, 1973.

MR. CITY: I think the same stipulation will apply to that document.

MR. O'MALLEY: That's correct.

MR. LUCEY: May this be marked as Exhibit E?

(A letter dated January 2, 1974, and described as containing a listing of State Police officers retired for disability from 1967 through and including December 1973, was marked Exhibit E.)

Q. Now, Colonel, referring to Exhibit E, this list again contains information relative to individuals who are now retired from the State Police?

A. Correct.

Q. And do you have any personal knowledge as to whether these individuals were permitted to serve in the Uniformed Division of the State Police with either temporary or permanent disabilities prior

to their retirement?

[45]

A. Well, I would say that if we start with 1972, almost every individual there, to my memory, retired within a reasonable time of the discovery of their disability.

Q. By reason of --

A. Wait, I just want to finish looking at the list.

Q. Sure.

A. With the exception of possibly two.

Now prior to '72, all right, if we take the period 1970 to 1972, which I would again have personal knowledge of, again, they all retired within a reasonable period of time of finding their disability.

Q. Fine.

Now, these defects, Colonel Murphy, would they have been revealed during the annual physical which is required of members over age 40?

A. In every instance of cardiovascular disease, that is how they were discovered.

Q. And in stating that they retired within a reasonable time after the

discovery of the defect, would it be a matter of months or would it be in some cases over a year after the discovery of the defect?

[46]

A. It would be unusual to go over a year.

Q. Would it be unusual for it to be more than six months after the discovery of the defect, or would it be usual for it to be less than six months after the discovery?

A. It would be more common to be less than six months.

Q. Thank you.

Doctor, just to clarify, I'm looking at the designations of the columns on both Exhibits D and E. Would "DOE" refer to date of entry, "DOB", date of birth, "DOD", date of departure?

A. I did not make the list up.

MR. O'MALLEY: I can stipulate "DOE" is date of enlistment, "DOB", date of birth and "DOD" --

THE WITNESS: Date of discharge.

Q. Earlier in your testimony, Colonel, you indicated that in the case of reinlistment physical and in the case of

the annual physical after age 40 you reviewed the medical records and made a determination as to whether the disability was temporary or permanent. Did you make this determination prior to communicating the disability to the Commissioner of Public Safety or after you communicated it to him?

[47]

A. Prior. It's all done at one time. At the time I communicate the disability I note whether it's permanent or temporary.

Q. Okay, thank you.

So that in permitting members with permanent disabilities to serve on waiver, he has the benefit of your professional medical opinion that, in permitting these individuals to continue to serve, that their physical condition is such as to impair the full performance of their duties?

A. That would be correct.

Q. Okay.

Is it possible for an individual to continue to serve as a member of the State Police force, Colonel Murphy, with more than one physical defect under more than

one waiver?

A. (no answer)

Q. In other words, could it be possible with a man with hypertension and a hernia to be serving?

A. Well, I'd say anything is possible, but that would be up to the Commissioner.

Q. Now, what does the term "full duty status" mean, or is that an improper term?

A. No, "full duty status" means to me that an individual must be capable of performing all duties of a State Police officer.

Q. And under what circumstances would a determination be made as to whether a person is entitled to resume full duty status? Would this be where a fellow was put on a status less than full duty and at some point in time his physical condition is reviewed to determine whether it is?

A. Certainly.

Q. Fine; and in the case of a return to full duty status, would a physical exam be conducted by one of your medical staff and would you then review the results of that physical exam before certifying a

man back to full duty status?

A. Generally, as far as returning him to full duty status goes, I conduct an examination myself.

Q. Is a physical examination required in connection with promotions within the Uniformed Branch of the State Police?

A. Not to my knowledge.

Q. So, then, physical ability to perform the duties of a State Policeman or the duties to which an individual might be promoted is not a significant consideration to the extent that a speeific physical examination is conducted and relied upon before a promotion is granted?

[49]

A. No.

Q. I may have asked this question beofe, Colonel. Are you generally familiar with the duties of the Detective Division of the State Police?

A. I have some familiarity with it, but I would not consider myself an expert in the Detective Branch at all.

Q. Do you consider yourself to have a sufficient familiarity with the duties of both branches to say that the physical stresses involved in the performance of

the duties of one branch is significantly greater than those in the other?

A. Yes.

Q. And what would that medical opinion be?

A. That as far as the Detective Branch goes, the function is primarily investigative. This means that their time can be programmed. As far as the Uniformed Branch, they may be exposed to stress at any hour of the day or night.

Q. Now, Colonel, do you have any personal knowledge of an individual presently serving with the Uniformed Division of the State Police who has undergone open heart surgery?

[50]

A. The individual you are referring to did not undergo open heart surgery.

Q. Okay, could you please --

Off the record.

(Discussion off the record)

Q. On the record, could you --

A. The individual you are referring to had a repair of an aneurysm of the aorta, which is very different from heart surgery.

Q. For my benefit, could you please

describe the condition that you have referred to as an aneurysm of the aorta?

A. Right, this is a weakening of the wall of the artery, and once it is repaired you are better off than when you were born.

Q. This is a weakening of the wall of any artery connected with the heart or a particular artery?

A. No, a weakening of any artery is known as an aneurysm. This particular artery is the main artery coming out of the heart.

Q. So that in the case of the individual that we are talking about, the operation was to correct a defect or to strengthen the wall of the main artery coming into the heart?

A. Right, which was caused -- or the occasion for the operation was the result of a cruiser accident in striking his chest against the steering wheel.

[51]

Q. At the time of this accident, approximately how old was the individual that we're referring to?

A. 46, 47 would be my guess.

Q. And in what year did the accident

take place?

A. About two years ago, I believe.

Q. Of course, the operation would have taken place --

A. Within that time.

Q. -- in the same period of time?

A. (No answer)

Q. Could you describe the surgery involved in strengthening the wall of the main artery to the heart as was done in the case of this individual?

A. Yes. Normally what you do is you excise the area which is weak and then take a dacron or prostheses, which is a synthetic artery, and put it in place of the portion you have excised.

Q. And do you recall how long a period of time the individual in question was hospitalized?

A. I do not recall how long he was hospitalized, no.

Q. Do you know where he was hospitalized?

A. Well, he was hospitalized in two different hospitals, but I believe eventually he was operated on at the Massachusetts General Hospital.

[52]

Q. Now, Colonel, as State Police

Surgeon have you had occasion to review the medical records of Colonel Murgia?

A. I have.

Q. And on the basis of the reviews of those records that you have conducted, do you have a general medical opinion of his state of health on the date of his retirement, which was, I believe, in July of 1972?

A. I would say the last time that I examined him, which was in March, I believe, of 1972, on the type of examination we did he showed no defects other than presbyopia, which is something that comes with age.

Q. And what type of a condition is this?

A. That is where you lose your near vision and have mildly elevated systolic blood pressure. It was the upper limit of normal. Other than that, I would consider him, for a 50-year-old man, to be in excellent condition.

Q. Do you have a medical opinion, Colonel Murphy, as to the mandatory age requirement of 50 as set forth in the statute?

A. Yes, I do.

[53]

Q. Could you state that opinion for the record?

A. My opinion, looking at --

Q. Medical opinion.

A. Medical opinion now, as far as the types of duties which members of the Uniformed Branch are involved, and this is reflected in the fact that come age 40 we start watching them more closely, I would prefer to see them require 20 years' service or age 50, whichever came earlier.

Q. As opposed to whichever came later?

A. Right.

Q. And could you state your reason for this?

A. The basic reason for it is the increased incidents we see of cardiovascular disease between age 40 and 50.

Q. Would you then say that no man over 50 could adequately or capably perform the duties of a State Policeman?

A. No, no way would I ever say that. There is always the exception.

Q. Would it be possible to conduct a physical examination which could determine whether a given individual regardless of his age but, in particular, an individual

over 50 to determine whether that individual possessed sufficient health to permit him to adequately perform the duties of a State Trooper?

A. Well, I know of no medical examination that can predict the future. There are certain tests that could be done that would give you a guess, but that's all.

Q. But would it not be possible to ascertain that on a given date, as a result of certain physical examinations and tests conducted, that this individual over 50 is as capable of performing the duties of a State Trooper as anyone else might be on the basis of the same physical examination?

A. I would say that I would have to disagree with that statement in that an individual at age 50 is 25 years older than when he was 25. Therefore, he does not have the same stamina and flexibility of his cardiovascular system that he had when he was 25.

Q. Do you have a medical opinion, Colonel Murphy, on the basis of your experience as to the rate of aging that one experiences? Is this rate of aging, for

instance, significantly greater between the ages of 55 to 60 than it is between the ages of 50 to 55?

A. Well, there are two answers to that question. You are asking basically about rate of aging. I would like to answer first about aging. Aging starts in your twenties. Now, the rate of aging has been shown by the Surgeon General's office to progress more rapidly from age 40 on.

[55]

Q. But if we were to look at a curve, would not the dramatic increase come at least above the age of 55 as opposed to below the age of 55 and, indeed, quite possibly above the age of 60 or 65?

A. Well, are you talking aging now or disease?

Q. Well, maybe you could make the distinction far better than I.

A. I mean, the aging process does not necessarily mean that you have a disease.

Q. But it could involve disease?

A. Right, and statistics do show that once you hit age 40 your incidence of cardiovascular disease increases and the

statistics that we have on the Massachusetts State Police indicate that their incidence of cardiovascular disease from age 40 to 50 is what you find in the general population. If you carry that from 50 beyond, I would expect the rate to increase, but I don't have any figures that would show that.

Q. Are you familiar with the terms "functional age" and "chronological age"?

A. Yes.

Q. Could you please tell us what those terms mean to you?

A. Chronological age is based upon your date of birth.

[56]

Q. Functional age?

A. Functional age is based upon your ability to perform both mentally and physically.

Q. Okay.

Would it be possible for an individual of age 50, let us say, to have a chronological-- or "functional" age, rather, of less than 50 in terms of the performance of a given set of duties?

A. Anything is possible.

Q. Would that situation be rare?

A. Yes.

MR. LUCEY: No more questions.

CROSS EXAMINATION

BY MR. O'MALLEY:

Q. Colonel Murphy, in formulating your judgment that the incidence of heart disease is greater after the age of 40 and the rate of increase is greater, did you rely upon your specific experience with the State Police?

A. Yes.

Q. How important was that experience in making that judgment?

A. Well, the reason I took the figures for the State Police was I wanted to compare them against known figures

[57]

for the general population, and it turned out to be significantly greater.

Q. Would you have been able to reach that conclusion by merely reading the results and regulations of the State Police as opposed to actually having that experience?

A. No, these are based upon actually counting heads.

Q. Do you think a medical expert who didn't have your particular experience at

the State Police would be able to reach that same conclusion merely by reading the rules and regulations?

A. I don't see how he would have any way of having that information.

Q. Concerning the relevance of medical stress factors to the development of coronary disease, have you run into any specific examples, without naming any names, where these factors have manifested themselves in terms of coronary disease?

A. Are you talking coronary disease now or hypertension or cardiovascular disease?

Q. Perhaps, to define it, is hypertension a coronary disease?

A. No, that would be cardiovascular disease.

Yes, I have.

Q. All right.

[58]

Will you describe the example without naming any names?

A. All right, I will describe an individual who is 29 years old who was exposed to a very stressful situation which involved an investigation of himself. He became quite mentally anguished

about it, was subsequently hospitalized. During his period of hospitalization, his blood pressure was in the range of 180 to 220 over approximately 120 to 130. This blood pressure stayed in that range for several weeks. On correction of the stressful aspect of the situation his blood pressure returned to normal.

Now, this is not a true case of hypertension. But what could happen here, if the stress situation had been maintained and the blood pressure remained in that area, this would cause disease to the arteries which, in turn, would then become hypertension.

Q. Would the nature of the strict discipline of the State Police possibly add a mental stress factor?

A. That was one of the -- or, probably, the precipitating incidence of this case.

Q. Would the fact that a State Policeman is on 24-hours' call and has various hours of duty possibly involve mental stress factors?

[59]

A. There is no question that it does. I can refer to another individual

who, because of the fact that he must work given shifts and is then subject to call, has developed stress problems.

Q. Would these mental stress factors interrelate with the physical stress factors together?

A. They certainly would. If you are all alone at 3:00 o'clock in the morning at the accident scene and you have got three or four bodies, you have got physical and mental stress.

Q. Colonel Murphy, have you had any experience with a military or quasi-military organization other than the State Police?

A. Yes, I have.

Q. Would you describe your position with them?

A. Yes.

I have been a member of the Massachusetts National Guard for 20 years. I have been for, let's see, five years senior medical officer. My additional responsibilities are to review the medical condition of all military personnel in the National Guard.

I'm a member of the Death and Injury Board of the Commonwealth, which

passes on disability claims.

And I am the Senior National Guard Medical Officer who sits on all 1st Army Physical Fitness Board for National Guard Personnel.

I am also responsible for enforcing all federal regulations pertaining

[60]

to medical fitness for National Guard personnel.

Q. Based on this experience, have you formed any medical opinion as to the relationship of age to fitness performed to functions of the National Guard?

A. Yes.

First of all, we have regulations we have to go by. As far as the range of Lieutenant Colonel goes, mandatory retirement from any position is at age 53. As far as being in a position of, let's say, Battalion Commander, which I think is a good analogy for the State Police, the recommended age is 45. After that you would move into a staff position.

Q. Why would you say the Battalion Commander is analogous to the State Police position?

A. Because to me the State Police

are basically a backup force. They have to contend with riots, and it's very similar to having to take what we call a maneuver or combat battalion into a combat-type situation.

Q. Could you produce the regs. where these age limits are proscribed?

[61]

A. Yes, I can. National Guard Regulation 600-100.

MR. O'MALLEY: Off the record

(Discussion off the record)

Q. On the record, will you describe that regulation in particular?

A. Basically, this refers to an assignment of officers, and what it states is:

(Reading) Officers in TOE -- that is, Table of Organization & Equipment -- are expected to be of suitable age for their positions on mobilization. It is realized that age alone is not always a valid criterion in determining suitability for a position. Consequently, much depends on the type of unit and the individual's ability, knowledge, skill, experience, vigor and general value to the service. As a general rule, however, officers

should not be assigned to TOE units if their age exceeds that shown below. Officers now holding TOE positions will not be removed solely because their ages exceed that shown. (end reading)

Q. Would you describe the meaning of the initials you used in there?

A. Table of Organization and Equipment. All that means is this is how

[62]

-- this is a description of how the unit is organized, in other words, an infantry battalion, signal battalion, these all have what we call TOE's.

Q. Can we have a copy of that?

Off the record.

(Discussion off the record)

MR. O'MALLEY: Would you mark that Exhibit F?

(A document entitled at the top "NGR 600-100" was marked Exhibit F.)

Q. And you are familiar with the examinations given to the National Guard members?

A. Certainly am. We do approximately 8,000 a year.

Q. How do they compare with the exams given to the State Police officers?

A. They are exactly the same.

Q. Is there a strength requirement?

A. Are you talking physical strength requirement for Guardsmen?

Q. Yes.

A. No, there is not.

Q. Is there one for the State Police?

A. Yes, there is.

You are talking about initial application?

Q. Right.

[63]

A. Right.

Q. Is the National Guard essentially an infantry-type unit?

A. In this state it is, yes.

Q. Colonel, if a State Police officer around the age of 50 passed your medical exam, your annual medical exam, but indicated a blood pressure with a systolic of 145 and a diastolic of 98, what kind of recommendation would you make for his duty?

A. A single blood pressure reading would mean nothing. I would recommend it be repeated on several different occasions to be sure we did not have incipient hypertension.

Q. If it were demonstrated that this blood pressure was a general historical physical indication, what would your recommendation be then?

A. If he were overweight, weight reduction, possibly assault and battery restriction.

Q. With respect to his duty --

A. And --

Q. With respect to his duty status?

A. At that point he would not be put on any light duty status, he would still be on full duty status.

Q. Have you formed a medical opinion as to whether an average State Police officer at the age of 40 [The parties on the court-filed copies corrected 40 to read 50.] is physically fit to perform

[64]

the full duty status of a State Police officer?

A. Yes.

Q. What is that opinion?

A. I do not believe they are.

Q. Would you state the basis for that opinion?

A. The basis for that opinion is coming again down to the fact that at age

50 I'm worried, if you have got a State Trooper going into Walpole, again because of age.

Q. What are some of the possibilities medically speaking of someone suffering from a cardiovascular attack or manifestation of abnormality or whatever, whatever the medical term is, once he goes in to suppress a prison riot?

A. At the age of 50 they are much much greater than it would be at the age of 25.

Q. And describe some of them.

A. Well, the most common one in a situation like Walpole for the acute phase would be myocardial infarction, or heart attack. On a sustained type of operation, which let's again go back to Walpole, where that went on for several months, here is where, because it's a prolonged period of time, you'd be more apt to see hypertension.

[65]

Q. Would that apply to a higher ranking officer as well as a trooper?

A. I would say the higher ranking officer is even more susceptible because he also has the additional problem of

responsibility.

Q. Have officers of higher rank performed that duty within your knowledge?

A. Yes.

MR. O'MALLEY: I don't have anything else right now.

May I ask a couple more questions? I said I was through, but may I ask a couple more?

Q. Does the nature of your examination, annual examination, after the age of 40 depend upon in any way the actual range of the individual being examined?

A. No.

Q. How about under 40?

A. Range would have no effect on examination.

Q. Will you describe the types of physicians or specialties involved of those who served under you when various examinations are given?

A. Every specialty is covered with the exception of pediatrics and obstetrics.

Q. Would you list some of the more common specialties?

A. Surgeons, internists, neurologists, ophthalmologists, radiologists,

[66]

urologists.

Q. Is a cardiologist involved?

A. That would be the internist.

Q. And it's also correct that you perform many of these examinations yourself?

A. Are we talking State Police now?

Q. State Police examinations, correct.

A. No, the bulk are done by these people because of the numbers that are involved.

Q. And you review all of them?

A. I review all, right.

Q. How about examinations given when people have gone on leave because of physical problems?

A. Those I would see myself.

MR. O'MALLEY: That's all.

MR. CITY: If I may, I would like to ask a few questions on redirect.

REDIRECT EXAMINATION

BY MR. CITY:

Q. As I understand it, the medical examinations for all members of the Uniformed Branch are the same, the medical requirements are the same regardless of

[67]

actual duties that they perform is that correct?

A. That would be correct.

Q. You assume that a man will be required to do the most onerous duties, will be called to perform the most onerous duties that can be called upon regardless of his range?

A. That is correct, that he could be.

Q. Would a Lieutenant Colonel be required to go into Walpole, inside the prison, and engage in hand-to-hand activity?

A. Yes.

Q. Would he be likely to be driving along Route 495 at 2:00 a.m. in the morning and discover a fatal accident?

A. Very possible.

Q. In your testimony here you tended to compare the 25-year old man with the 50-year old man, and your testimony I believe was that the 25-year old man was far more fit than the 50-year old man to perform these duties.

A. As a general statement, yes.

Q. As a general rule.

Now, sir, I would like to direct your attention to the ages that occur

between 25 and 50, at age 30, 40, 45 and 50, and I would like you to comment about your feelings as a general rule of a man's

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ability at age 30 and so forth.

A. As each year goes by, an individual, depending upon his motivation, depending upon how he is going to maintain his physical condition, but as each year goes by it becomes more difficult to maintain a high level of physical proficiency. This is the normal aging process.

Now, if you are out of shape at age 30, it's going to take you longer to get back into shape than if you were age 21 or age 25. The same applies at age 35.

And then, when you get up to age 40 and beyond it becomes an extremely difficult task because by this time you have lost the elasticity of the cardiovascular tree, which I think is the key to the whole point.

Q. So that your feeling, I take it, is that men from the age of 40 who do not take good physical care of themselves are less efficient and less able to perform the duties that are required of a State Trooper; is that correct?

A. No. What I am saying is that a man at age 40 who has not maintained himself in top flight condition is going to find it almost impossible to get back in top flight condition.

Q. How is a man who has maintained himself in top flight condition at age 40 able to perform his duties as a State Trooper as compared to a man at age 25 in a similar condition?

A. The man at age 25 always has the advantage.

Q. Is there any significant distinc-

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tion in your mind between a man in top flight condition at age 45 then a man in a similar condition at age 50?

A. Yes, he's five years older.

Q. In your examination of Colonel Murgia in March of 1972 prior to his retirement, was he capable of performing the duties of a State Policeman?

A. Yes.

MR. CITY: That is all we have.

RECROSS EXAMINATION

BY MR. O'MALLEY:

Q. Colonel, would you indicate the range of normality in a blood pressure

measurement?

A. Well, in general, the figures that are utilized, I do not like to see the systolic above 140 or the diastolic above 90. You do not become concerned, overly concerned, about a hypertensive state until your diastolic is persistenly shown to be around a hundred.

MR. O'MALLEY: That's all.

(Whereupon, the deposition adjourned at 1:10 o'clock p.m.)

[REPORTER'S CERTIFICATE OMITTED IN PRINTING.]

[JURAT OMITTED IN PRINTING.]

[EXHIBITS, EXCEPT FOR EXHIBIT A-3, OMITTED IN PRINTING.]

[EXHIBIT A-3]

MEDICAL FITNESS STANDARDS FOR INITIAL APPOINTMENT TO THE MASSACHUSETTS STATE POLICE

(Short Title: Procurement Medical Fitness Standards)

2-1. SCOPE

This chapter sets forth the medical conditions and physical defects which are cause for rejection for initial appointment as a Massachusetts State Police Officer.

2-2. Applicability

These standards apply to all male and female applicants for initial appointment to the Uniformed Branch of the Massachusetts State Police. These standards are applicable until the individual has completed a minimum of 120 days satisfactory service as a State Police Officer.

Section II. ABDOMEN AND GASTROINTESTINAL SYSTEM

2-3. Abdominal Organs and Gastrointestinal System

The causes for rejection for appointment, enlistment, ~~and induction are~~

a. Cholocystectomy, sequelae of, such as post-operative stricture of the

common bile duct, reforming of stones in hepatic or common bile ducts, or incisional hernia, or postcholecystectomy syndrome when symptoms are so severe as to interfere with normal performance of duty.

b. Cholecystitis, acute or chronic, with or without cholelithiasis, if diagnosis is confirmed by usual laboratory procedures or authentic medical records.

c. Cirrhosis regardless of the absence of manifestations such as jaundice, ascites or known esophageal varices, abnormal liver function tests with or without history of chronic alcoholism.

d. Fistula in ano.

e. Gastritis, chronic hypertrophic, severe.

f. Hemorrhoids.

(1) External hemorrhoids producing marked symptoms.

(2) Internal hemorrhoids, ~~if large or~~ accompanied with hemorrhage or protruding intermittently or constantly.

g. Hepatitis within the preceding 6 months, or persistence of symptoms after a reasonable period of time with objective evidence of impairment of liver function.

h. Hernia:

(1) Hernia other than small asymptomatic umbilical or hiatel.

(2) History of operation for hernia within the preceding 60 days.

i. Intestinal obstruction or authenticated history of more than one episode, if either occurred during the preceding 5 years or if resulting condition remains which produces significant symptoms or requires treatment.

j. Megacolon of more than minimal degree, diverticulitis, regional enteritis, and ulcerative colitis. Irritable colon of more than moderate degree.

k. Pancreas, acute or chronic disease of, if proven by laboratory tests, or authenticated medical records.

l. Rectum, stricture or prolapse of.

m. Resection, gastric or of bowel; or gastroenterostomy; however minimal intestinal resection in infancy or childhood (for example: for intussusception or pyloric stenosis) is acceptable if the individual has been asymptomatic since the resection and if surgi-

cal consultation (to include upper and lower gastrointestinal series) gives complete clearance.

n. Scars.

(1) Scars, abdominal, regardless of cause, which shown hernial bulging or which interfere with movements.

(2) Scar pain associated with disturbance of function of abdominal or contained viscera.

o. Sinuses of the abdominal wall.

p. Splenectomy, except when accomplished for the following:

(1) Trauma.

(2) Causes unrelated to diseases of the spleen.

(3) Hereditary spherocytosis.

(4) Disease involving the spleen when followed by correction of the condition for a period of at least 2 years.

q. Tumors. See paragraphs 2-40 and 2-41.

r. Ulcer:

(1) Ulcer of the stomach or duodenum if diagnosis is confirmed by X-ray examination, ~~or authenticated history thereof~~.

~~(2) Authentic history of surgical operation(s) for gastric or duodenal ulcer.~~

s. Other congenital or acquired abnormalities and defects which preclude satisfactory performance of ~~military~~ duty or which require frequent and prolonged treatment.

Section III. BLOOD AND BLOOD-FORMING TISSUE DISEASES

2-4. Blood and Blood-Forming Tissue Diseases

The causes for rejection for appointment, enlistment and induction are--

a. Anemia:

(1) Blood loss anemia--until both condition and basic cause are corrected.

(2) Deficiency anemia, not controlled by medication.

(3) Abnormal destruction of RBC's: Hemolytic anemia.

(4) Faulty RBC construction: Hereditary hemolytic enemia, thallassemia, and sickle cellanemia.

(5) Myclophthisic anemia: Myclomatosis, leukemia, Hodgkin's disease.

(6) Primary refractory anemia: Aplastic anemia, DiGuglielmo's syndrome.

b. Hemorrhagic states:

(1) Due to changes in coagulation system (hemophilia, etc.).

(2) Due to platelet deficiency.

(3) Due to vascular instability.

c. Leukopenia, chronic or recurrent, associated with increased susceptibility to infection.

d. Mycloproliferative disease (other than leukemia):

(1) Myelofibrosis.

(2) Megakaryocytic myelosis.

(3) Polycythemia vera.

e. Splenomegaly until the cause is remedied.

f. Thromboembolic disease except for acute, nonrecurrent conditions.

Section IV. DENTAL

2-5. Dental

The cause for rejection for appointment, enlistment, and induction are--

a. Diseases of the jaws or associated tissues which are not easily remediable and which will incapacitate the individual or prevent the satisfactory performance of ~~military~~ duty.

b. Malocclusion, severe, which interferes with the mastication of a normal diet.

c. Oral tissues, extensive loss of, in an amount that would prevent replacement of missing teeth with a satisfactory prosthetic appliance.

~~d. Orthodontic appliances. See special administrative criteria in paragraph 7-12.~~

e. Relationship between the mandible and maxilla of such a nature as to preclude future satisfactory prosthodontic replacement.

Section V. EARS AND HEARING

2-6. Ears

The causes for rejection for appointment, enlistment, ~~and induction are--~~

a. Auditory canal:

(1) Atresia or severe stenosis of the external auditory canal.

BEST COPY AVAILABLE

(2) Tumors of the external auditory canal except mild exostoses.

(3) Severe external otitis, acute or chronic.

b. Auricle: Agenesis, severe; or severe traumatic deformity, unilateral or bilateral.

c. Mastoids:

(1) Mastoiditis, acute or chronic.

(2) Residual or mastoid operation with marked external deformity which precludes or interferes with the wearing of a gas mask or helmet.

(3) Mastoid fistula.

d. Meniere's syndrome.

e. Middle ear:

(1) Acute or chronic suppurative otitis media. Individuals with a recent history of acute suppurative otitis media will not be accepted unless the condition is healed and a sufficient interval of time subsequent to treatment has elapsed to insure the disease is in fact not chronic.

(2) Adhesive otitis media associated with hearing level by audiometric test of 20 db or more average for the

frequencies (500, 1000, and 5000 cycles per second) in either ear regardless of the hearing level in the other ear.

(3) Acute or chronic serous otitis media.

(4) Presence of attic perforation in which presence of cholesteatoma is suspected.

(5) Repeated attacks of catarrhal otitis media; intact greyish, thickened drum(s).

f. Tympanic membrane:

*(1) Any perforation of the tympanic membrane.

*Significant

(2) Severe scarring of the tympanic membrane associated with hearing level by audiometric test of 20 db or more average for the speech frequencies (500, 1000, and 2000 cycles per second) in either ear regardless of the hearing level in the other ear.

g. Other diseases and defects of the ear which obviously preclude satisfactory performance of duty or which require frequent and prolonged treatment.

2-7. Hearing.
(See also para. 2-6.)
The cause for rejection for appointment, enlistment, ~~and induction is--~~

Hearing acuity level by audiometric testing (regardless of conversational or whispered voice hearing acuity) greater than that described in table I, appendix II. ~~There is no objection to conducting the whispered voice test or the spoken voice test as a preliminary to conducting the audiometric hearing test.~~

Section VI. ENDOCRINE AND METABOLIC DISORDERS

*2-8. Endocrine and Metabolic Disorders
The causes for rejection for appointment, enlistment, and induction are --

a. Adrenal gland, malfunction of, of any degree.

b. Cretinism.

c. Diabetes insipidus.

d. Diabetes mellitus.

e. Gigantism or acromegaly.

f. Glycosuria, persistent, regardless of cause.

g. Goiter;

(1) Simple goiter with definite pressure symptoms or so large in size as to interfere with the wearing of a ~~military~~ uniform or ~~military~~ equipment.

(2) Thyrotoxicosis.

h. Gout.

i. Hyperinsulinism, confirmed, symptomatic.

j. Hyperparathyroidism and hypoparathyroidism.

k. Hypopituitarism, severe.

l. Myxedema, spontaneous or postoperative (with clinical manifestations and not based solely on low basal metabolic rate).

m. Nutritional deficiency diseases (including sprue, beriberi, pellagra, and scurvy) ~~which are more than mild and not readily remediable or in which permanent pathological changes have been established.~~

n. Other endrocrine or metabolic disorders which obviously preclude satisfactory performance of duty or which require frequent and prolonged treatment.

Section VII. EXTREMITIES

2-9. Upper Extremities.

(See para. 2-11)

The causes for rejection for appointment, enlistment, and induction are--

a. Limitation of motion. An individual will be considered unacceptable if the joint ranges of motion are less than the measurements listed below (app. IV).

(1) Shoulder:

(a) Forward elevation to 90°.

(b) Abduction to 90°.

(2) Elbow:

(a) Flexion to 100°

(b) Extension to 15°.

(3) Wrist: A total range of 15° (extension plus flexion).

(4) Hand: Pronation to the first quarter of the normal arc.

Supination to the first quarter of the normal arc.

(5) Fingers: Inability to clench fist, pick up a pin or needle, and grasp an object.

b. Hand and fingers:

(1) Absence (or loss) of more than 1/3 of the distal phalanx of either thumb.

(2) Absence (or loss) of distal and middle phalanx of an index, middle or ring finger of either hand irrespective of the absence (or loss) of little finger.

(2.1) Absence of more than the distal phalanx of any two of the following fingers, index, middle finger or ring finger, of either hand.

(3) Absence of hand or any portion thereof, except for fingers as noted above.

(4) Hyperdactylia.

(5) Scars and deformities of the fingers and/or hand which impair circulation, are symptomatic, are so disfiguring as to make the individual objectionable in ordinary social relationships, or which impair normal function to such a degree as to interfere with the satisfactory performance of ~~military~~ duty.

c. Wrist, forearm, elbow, arm, and shoulder: Healed disease or injury of

wrist, elbow, or shoulder with residual weakness or symptoms of such a degree as to preclude satisfactory performance of duty.

2-10. Lower Extremities

(See para. 2-11.)

The causes for rejection for appointment, enlistment, and induction are--

a. Limitation of motion. An individual will be considered unacceptable if the joint ranges of motion are less than the measurements listed below (app. IV).

(1) Hip.

(a) Flexion to 90°.

(b) Extension to 10° (beyond 0).

(2) Knee.

(a) Full extension.

(b) Flexion to 90°.

(3) Ankle.

(a) Dorsiflexion to 10°.

(b) Plantar flexion to 10°.

(4) Toes. Stiffness which interferes with walking, marching, running, or jumping.

b. Foot and ankle.

(1) Absence of one or more small toes of one or both feet, if function of the foot is poor or running or jumping is precluded, or absence of foot or any portion thereof except for toes as noted herein.

(2) Absence (or loss) of great toe(s) or loss of dorsal flexion thereof if function of the foot is impaired.

(3) Claw toes precluding the wearing of ~~combat~~ service boots.

(4) Clubfoot.

(5) Flatfoot, pronounced cases, with decided eversion of the foot and marked bulging of the inner border, due to inward rotation of the astragalus, regardless of the presence or absence of symptoms.

(6) Flatfoot, spastic.

(7) Hallux valgus, if severe and associated with marked exostosis or bunion.

(8) Hammer toe which interferes with the wearing of ~~combat~~ service boots.

(9) Healed disease, injury, or deformity including hyperdactylia which

precludes running, is accompanied by disabling pain, or which prohibits wearing of ~~combat~~ service boots.

(10) Ingrowing toe nails, if severe, and not remediable.

(11) Obliteration of the transverse arch associated with permanent flexion of the small toes.

(12) Pes cavus, with contracted plantar fascia, dorsiflexed toes, tenderness under the metatarsal heads, and callosity under the weight bearing areas.

c. Leg, knee, thigh, and hip.

(1) Dislocated, semilunar cartilage, loose or foreign bodies within the knee joint, or history of surgical correction of same if--

(a) Within the preceding 6 months.

(b) Six months or more have elapsed since operation without recurrence, and there is instability of the knee ligaments in lateral or anteroposterior directions in comparison with ~~with~~ the normal knee or abnormalities noted on X-ray, there is significant atrophy or weakness of the thigh muscula-

ture in comparison with the normal side, there is not acceptable active motion in flexion and extension, or there are other symptoms of internal derangement.

(2) Authentic history or physical findings of an unstable or internally deranged joint causing disabling pain or seriously limiting function. Individuals with verified episodes of buckling or locking of the knee who have not undergone satisfactory surgical correction or if, subsequent to surgery, there is evidence of more than mild instability of the knee ligaments in lateral and anteroposterior directions in comparison with the normal knee, weakness or atrophy of the thigh musculature in comparison with the normal side, or if the individual requires medical treatment of sufficient frequency to interfere with the performance of ~~military~~ duty.

d. General

(1) Deformities of one or both lower extremities which have interfered with function to such a degree as to prevent the individual from following a

physically active vocation in civilian life or which would interfere with the satisfactory completion of prescribed training and performance of military duty.

(2) Diseases or deformities of the hip, knee, or ankle joint which interfere with walking, running, or weight bearing.

(3) Pain in the lower back or leg which is intractable and disabling to the degree of interfering with walking, running, and weight bearing.

(4) Shortening of a lower extremity resulting in any limp of noticeable degree,

2-11. Miscellaneous

(See also para. 2-9 and 2-10.)

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Arthritis.

(1) Active or subacute arthritis, including Marie-Strumpell type.

(2) Chronic osteoarthritis or traumatic arthritis of isolated joints of more than minimal degree, which has interfered with the following of a

physically active vocation in civilian life or which precludes the satisfactory performance of military duty.

(3) Documented clinical history of rheumatoid arthritis.

(4) Traumatic arthritis of a major joint of more than minimal degree.

b. Disease of any bone or joint healed, with such resulting deformity or rigidity that function is impaired to such a degree that it will interfere with ~~military~~ service.

c. Dislocation, old unreduced; substantiated history of recurrent dislocations of major joints; instability of a major joint, symptomatic and more than mild; or if, subsequent to surgery, there is evidence of more than mild instability in comparison with the normal joint, weakness or atrophy in comparison with the normal side, or if the individual requires medical treatment of sufficient frequency to interfere with the performance of ~~military~~ duty.

d. Fractures.

(1) Malunited fractures that interfere significantly with function.

(2) Ununited fractures.

(3) Any old or recent fracture in which a plate, pin, or screws were used for fixation and left in place and which may be subject to easy trauma, i.e., as a plate tibia, etc.

e. Injury of a bone or joint within the preceding 6 weeks, without fracture or dislocation, of more than a minor nature.

f. Muscular paralysis, contracture, or atrophy, if progressive or of sufficient degree to interfere with ~~military~~ service.

f.1. Myotonia congenita. Confirmed.

g. Osteomyelitis, active or recurrent, of any bone or substantiated history of osteomyelitis of any of the long bones unless successfully treated 2 or more years previously without subsequent recurrence or disqualifying sequelae as demonstrated by both clinical and X-ray evidence.

h. Osteoporesis.

i. Scars, extensive, deep, or adherent, of the skin and soft tissues or neuromas of an extremity which are

painful, which interfere with muscular movements, which preclude the wearing of ~~military~~ equipment, or that show a tendency to break down.

*j. Chondromalacia, manifested by verified history of joint effusion, interference with function, or residuals from surgery.

Section VIII. EYES AND VISION

2-12. Eyes

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Lids.

(1) Blepharitis, chronic more than mild. Cases of acute blepharitis will be rejected until cured.

(2) Blepharospasm.

(3) Dacryocystitis, acute or chronic.

(4) Destruction of the lids, complete or extensive, sufficient to impair protection of the eye from exposure.

(5) Disfiguring cicatrices and adhesions of the eyelids to each other or to the eyeball.

(6) Growth or tumor of the eyelid other than small early basal cell tumors of the eyelid, which can be cured by treatment, and small nonprogressive asymptomatic benign lesions. See also paragraphs 2-40 and 2-41.

(7) Marked inversion or eversion of the eyelids sufficient to cause unsightly appearance or watering of eyes (entropion or ectropion).

(8) Lagophtalmos.

(9) Ptosis interfering with vision.

(10) Trichiasis, severe.

b. Conjunctiva.

(1) Conjunctivitis, chronic, including vernal catarrh and trachoma. Individuals with acute conjunctivitis are unacceptable until the condition is cured.

(2) Pterygium:

(a) Pterygium recurring after three operative procedures.

(b) Pterygium encroaching on the cornea in excess of 3 millimeters or interfering with vision.

c. Cornea.

(1) Dystrophy, corneal, of any type including keratoconus of any degree.

(2) Keratitis, acute or chronic.

(3) Ulcer, corneal; history of recurrent ulcers or corneal abrasions (including herpetic ulcers).

(4) Vascularization or opacification of the cornea from any cause which interferes with visual function or is progressive.

d. Uveal tract. Inflammation of the uveal tract except healed traumatic choroiditis.

e. Retina.

(1) Angiomatoses, phakomatoses, retinal cysts, and other congenito-hereditary conditions that impair visual function.

(2) Degenerations of the retina to include macular cysts, holes, and other degenerations (hereditary or acquired degenerative changes) and other conditions affecting the macula. All types of pigmentary degenerations (primary and secondary).

(3) Detachment of the retina or history of surgery for same.

(4) Inflammation of the retina (retinitis or other inflammatory conditions of the retina to include Coat's disease, diabetic retinopathy, Eales' disease, and retinitis proliferans).

f. Optic nerve.

(1) Congenito-hereditary conditions of the optic nerve or any other central nervous system pathology affecting function of the optic nerve.

(2) Optis neuritis, neuroretinitis, or secondary optic atrophy resulting therefrom or document history of attacks of retrobulbar neuritis.

(3) Optic atrophy (primary or secondary).

(4) Papilledema.

g. Lens.

(1) Aphakia (unilateral or bilateral).

(2) Dislocation, partial or complete, of a lens.

(3) Opacities of the lens which interfere with vision or which are considered to be progressive.

h. Ocular mobility and motility.

(1) Diplopia, documented, constant or intermittent from any cause or of any degree interfering with visual function (i.e., may suppress).

(2) Diplopia, monocular, documented, interfering with visual function.

(3) Nystagmus, with both eyes fixing, congenital or acquired.

(4) Strabismus of 40 prism diopters or more, uncorrectable by lenses to less than 40 diopters.

(5) Strabismus of any degree accompanied by documented diplopia.

(6) Strabismus, surgery for the correction of, within the preceding 6 months.

i. Miscellaneous defects and diseases.

(1) Abnormal conditions of the eye or visual fields due to diseases of the central nervous system.

(2) Absence of an eye.

(3) Asthenopia severe.

(4) Exophthalmus, unilateral or bilateral.

(5) Glaucoma, primary or secondary.

(6) Hemianopsia of any type.

(7) Loss of normal pupillary reflex

reactions to light or accommodation to distance or Adies syndrome.

(8) Loss of visual fields due to organic disease.

(9) Night blindness associated with objective disease of the eye. Verified congenital night blindness.

(10) Residuals of old contusions, lacerations, penetrations, etc., which impair visual function required for satisfactory performance of military duty.

(11) Retained intra-ocular foreign body.

(12) Tumors. See a(6) above and paragraphs 2-40 and 2-41.

(13) Any organic disease of the eye or adnexa not specified above which threatens continuity of vision or impairment of visual function.

2-13. Vision

The causes for medical rejection for appointment, enlistment, and introduction are listed below. The special administrative criteria for officer assignment to Armor, Artillery, Infantry, Corps of Engineers, Signal Corps, and Military Police Corps are listed in paragraph 7-15.

a. Distant visual acuity. Distant visual acuity of any degree which does not correct to at least one of the following:

(1) 20/40 in one eye and 20/70 in the other eye.

(2) 20/30 in one eye and 20/100 in the other eye.

(3) 20/20 in one eye and 20/400 in the other eye.

b. Near visual acuity. Near visual acuity of any degree which does not correct to at least J-6 in the better eye.

c. Refractive error. Any degree of refractive error in spherical equivalent of over -8.00 or +8.00; or if ordinary spectacles cause discomfort by reason of ghost images, prismatic displacement, etc.; or if an ophthalmological consultation reveals a condition which is disqualifying.

d. Contact lens. Complicated cases requiring contact lens for adequate correction of vision as keratoconus, corneal scars, and irregular astigmatism.

[Section 2-13 Vision (on this and preceding page, crossed out on original and the following language handwritten on that page: "Change this section to provide for 20/20 binocular vision. J-1 near

vision and Red-green color blindness."]

Section IX. GENITOURINARY SYSTEM

2-14. Gonitalia

(See also para 2-40 and 2-41.)

The causes for rejection for appointment, enlisted, ~~and induction are~~

a. Bartholinitis, Bartholin's cyst.

b. Cervicitis, acute or chronic manifested by leukorrhea.

c. Dysmonorrhea, incapacitating to a degree which necessitates recurrent absences of more than a few hours from routine activities.

d. Endometriosis, or confirmed history thereof.

e. Hermaphroditism.

f. Menopausal syndrome, either physiologic or artificial if manifested by more than mild constitutional or mental symptoms, or artificial menopause if less than 13 months have elapsed since cessation of menses. In all cases of artificial menopause, the clinical diagnosis will be reported; if accomplished by surgery, the pathologic report will be obtained and recorded.

g. Menstrual cycle, irregularities of, including menorrhagia, if excessive;

metrorrhagia; polymenorrhea; amenorrhea, except as noted in f above.

h. New growths of the internal or external genitalia except single uterine fibroid, subserous, asymptomatic, less than 3 centimeters in diamter, with no general enlargement of the uterus. See also paragraphs 2-40 and 2-41.

i. Oophoritis, acute or chronic.

j. Ovarian cysts, persistent and considered to be of clinical significance.

k. Pregnancy.

l. Salpingitis, acute or chronic.

m. Testicle(s). (See also para 2-40 and 2 41.)

(1) Absence or nondescent of both testicles.

(2) Undiagnosed enlargement or mass of testicle or epididymis.

(3) ~~Undescended testicle~~.

n. Urethritis, acute or chronic, other than gonorrheal urethritis without complications.

o. Uterus.

(1) Cervical polyps, cervical ulcer, or marked erosion.

(2) Endocervicitis, more than mild.

(3) Generalized enlargement of the

uterus due to any cause.

(4) malposition of the uterus if more than mildly symptomatic.

p. Vagina.

(1) Congenital abnormalities or severe lacerations of the vagina.

(2) Vaginitis, acute or chronic, manifested by leukorrhea.

q. Varicoccle or hydrocele, if large or painful.

r. Vulva.

(1) Leukoplakia.

(2) Vulvitis, acute or chronic.

s. Major abnormalities and defects of the genitalia such as a change of sex, a history thereof, or complications (adhesions, disfiguring scars, etc.) residual to surgical correction of these conditions.

2-15. Urinary System

(See para 2-8, 2-40, and 2-41).

The causes for rejection for appointment, enlistment, and induction are-

a. Albuminuria if persistent or recurrent including so-called orthostatic or functional albuminuria.

b. Cystitis, chronic. Individuals with acute cystitis are unacceptable until the condition is cured.

c. Enuresis determine to be a symptc of an organic defect not amenable to trea ment. (See also para 2-34c.)

d. Epispadias or hypospadias when ac panied by evidence of infection of the ur nary tract or if clothing is soiled when voiding.

e. Hematuria, cylindruria, or other findings indicative of renal tract disease

f. Incontinence of urine.

g. Kidney.

(1) Absence of one kidney, regardless of cause.

(2) Acute or chronic infections of the kidney.

(3) Cystic or polycystic kidney, confirmed history of.

(4) Hydronephrosis or pyonephrosis.

(5) Nephritis, acute or chronic.

(6) Pyelltis, pyelonephritis.

h. Penis, amputation of, if the resulting stump is insufficient to permit micturition in a normal manner.

i. Peyronie's disease.

j. Prostate glad, hyperthrophy of, with urinary retention.

k. Renal calculus.

(1) Substantiated history of bilateral renal calculus at any time.

(2) Verified history of renal calculus at any time with evidence of stone formation within the preceding 12 months, current symptoms or positive X-ray for calculus.

l. Skeneitis.

m. Urethra.

(1) Stricture of the urethra.

(2) Urethritis, acute or chronic, other than gonorrheal urethritis without complications.

n. Urinary fistula.

o. Other diseases and defects of the urinary system which obviously preclude satisfactory performance of duty or which require frequent and prolonged treatment.

Section X. HEAD AND NECK.

2-16. Head

The causes for rejection for appointment, enlistment, ~~and induction~~ are-

a. Abnormalities which are apparently temporary in character resulting from recent injuries until a period of 3 months has elapsed. These include severe contusions and other wounds of the scalp and cerebral concussion. See paragraph 2-31.

b. Deformities of the skull in the

nature of depressions, exostoses, etc., of a degree which would prevent the individual from wearing a gas mask or ~~military~~ headgear.

c. Deformities of the skull of any degree associated with evidence of disease of the brain, spinal cord, or peripheral nerves.

d. Depressed fractures near central sulcus with or without convulsive seizures.

e. Loss or congenital absence of the bony substance of the skull not successfully corrected by reconstructive material:

(1) All cases involving absence of the bony substance of the skull which have been corrected but in which the defect is in excess of 1 square inch or the size of a 25 cent piece, will be referred to The Surgeon General together with a report of consultation;

(2) The report of consultation will include an evaluation of any evidence of alteration of brain function in any of its several spheres, i.e., intelligence, judgment, perception, behavior, motor control and sensory function as well as any evidence of active bone disease or other related complications. Current X-rays and other pertinent laboratory data will

accompany such a report of consultation.

f. Unsightly deformities, such as large birthmarks, large hairy moles, extensive scars, and mutilations due to injuries or surgical operations; ulcerations; fistulae, atrophy, or paralysis of part of the face or head.

2-17. Neck

The causes for rejection for appointment, enlistment, ~~and induction~~ are-

a. Cervical ribs if symptomatic, or so obvious that they are found on routine physical examination. (Detection based primarily on X-ray is not considered to meet this criterion.)

b. Congenital cysts of branchial cleft origin or those developing from the remnants of the thyroglossal duct, with or without fistulous tracts.

c. Fistula, chronic draining, of any type.

*d. (Deleted)

e. Nonspastic contraction of the muscles of the neck or cicatrical contracture of the neck to the extent that it interferes with the wearing of a uniform or ~~military~~ equipment or so disfiguring as to make the individual

objectionable in common social relationships.

f. Spastic contraction of the muscles of the neck, persistent, and chronic.

g. Tumor of thyroid or other structures of the neck. See paragraphs 2-40 and 2-41.

Section XI. HEART AND VASCULAR SYSTEM

2-18. Heart

The causes for rejection for appointment, enlistment, ~~and induction are~~-

a. All organic valvular diseases of the heart, including those improved by surgical procedures.

b. Coronary artery disease or myocardial infarction, old or recent or true angina pectoris, at any time.

c. Electrocardiographic evidence of major arrhythmias such as--

(1) Atrial tachycardia, flutter, or fibrillation, ventricular tachycardia or fibrillation.

(2) Conduction defects such as first degree atrio-ventricular block and right bundle branch block. (These conditions occurring as isolated findings are not unfitting when cardiac evaluation reveals no cardiac disease.)

(3) Left bundle branch block, 2d and 3d degree AV block.

(4) Unequivocal electrocardiographic evidence of old or recent myocardial infarction; coronary insufficiency at rest or after stress; or evidence of heart muscle disease.

d. Hypertrophy or dilatation of the heart as evidenced by clinical examination or roentgenographic examination and supported by electrocardiographic examination. Care should be taken to distinguish abnormal enlargement from increased diastolic filling as seen in the well conditioned subject with a sinus bradycardia. Cases of enlarged heart by X-ray not supported by electrocardiographic examination will be forwarded to The Surgeon General for evaluation.

e. Myocardial insufficiency (congestive circulatory failure, cardian decompensation) obvious or covert, regardless of cause.

f. Paroxysmal tachycardia within the preceding 5 years, or at any time if recurrent or disabling or if associated with electrocardiographic evidence

of accelerated A-V conduction (Wolff-Parkinson-White).

*g. Pericarditis; endocarditis; or myocarditis, history or finding of, except for a history of a single acute idiopathic or coxsackic pericarditis with no residuals, or tuberculous pericarditis adequately treated with no residuals and inactive for 2 years.

h. Tachycardia persistent with a resting pulse rate of 100 or more, regardless of cause.

2-19. Vascular System

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Congenital or acquired lesions of the aorta and major vessels, such as syphilitic aortitis, demonstrable atherosclerosis which interferes with circulation, congenital or acquired dilation of the aorta (especially if associated with other features of Marfan's syndrome), and pronounced dilatation of the main pulmonary artery.

b. Hypertension evidenced by preponderant blood pressure readings of 150-mm or more systolic in an individual over 35 years of age or preponderant readings of 140-mm or more systolic in an indi-

vidual 35 years of age or less. Preponderant diastolic pressure over 90-mm diastolic is cause for rejection at any age.

c. Marked circulatory instability as indicated by orthostatic-hypotension, persistent tachycardia, severe peripheral vasomotor disturbances and sympathetico-tonia.

d. Peripheral vascular disease including Raynard's phenomena, Buerger's disease (thromoboangiitis obliterans), crythromelalgia, arteriosclerotic and diabetic vascular diseases. Special tests will be employed in doubtful cases.

e. Thrombophlebitis.

(1) History of thrombophlebitis with persistent thrombus or evidence of circulatory obstruction or deep venous incompetence in the involved veins.

(2) Recurrent thrombophlebitis.

f. Varicose veins, if more than mild, or if associated with edema, skin ulceration, or residual scars from ulceration.

2-20. Miscellaneous

The causes for rejection for appointment, enlistment, and inducation are--

a. Aneurysm of the heart or major

vessel, congenital or acquired.

b. History and evidence of a congenital abnormality which has been treated by surgery but with residual abnormalities or complications, for example: Patent ductus arteriosus with residual cardiac enlargement or pulmonary hypertension; resection of a coarctation of the aorta without a graft when there are other cardiac abnormalities or complications; closure of a secundum type artrial septal defect when there are residual abnormalities or complications.

c. Major congenital abnormalities and defects by the heart and vessels unless satisfactorily corrected without residuals or complications. Uncomplicated dextrocardia and other minor asymptomatic anomalies are acceptable.

d. Substantial history of rheumatic fever or chorea within the previous 2 years, recurrent attacks of rheumatic fever or chorea at any time, or with evidence of residual cardiac damage.

Section XII. HEIGHT, WEIGHT, AND BODY BUILD

2-21. Height

The causes for rejection for appoint-

ment, enlistment, and induction are--

a. For appointment.

(1) Men. Regular Army-Height below 66 inches ~~or over 80 inches. (See administrative criteria in para 7-13.) Other--Height below 69 inches or over 80 inches.~~ 69

(2) Women. Height below 58 inches or over 72 inches.

~~b. For enlistments and induction.~~

~~(1) Men.--Height below 60 inches or over 80 inches for Army and Air Force.~~

~~(2) Men.--Height below 60 inches and over 78 inches for Navy and Marine Corps.~~

~~(3) Women.--Height below 58 inches or over 72 inches.~~

2-22. Weight

The causes for rejection for appointment, enlistment, and induction are--

a. Weight related to height which is below the minimum shown in table I, appendix III for men and table II, appendix III for women.

b. Weight related to age and height which is in excess of the maximum shown in table I, appendix III for men and table II, appendix III for women. ~~See chapter 7 for special requirements pertaining to~~

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~~to maximum weight standards applicable to women--enlisting for and commissioned from Army Student Nurse and Army Student Dietician Programs.~~

2-23. Body Build

The causes for rejection for appointment, enlistment, and induction are--

a. Congenital malformation of bones and joints. (See para 2-9, 2-10, and 2-11.)

b. Deficient muscular development which would interfere with the completion of required training.

c. Evidences of congenital asthenia (slender bones; weak thorax; visceroptosis; severe, chronic constipation; or "drop heart" if marked in degree).

d. Obesity. Even though the individual's weight is within the maximum shown in table I or II, as appropriate, appendix III, he will be reported as medically unacceptable when the medical examiner considers that the individual's weight in relation to the bony structure and musculature, constitutes obesity of such a degree as to interfere with the satisfactory completion of prescribed training.

Section XIII. LUNGS AND CHEST WALL

2-24. General

The following conditions are causes for rejection for appointment, enlistment ~~and induction~~ until further study indicates recovery without disqualifying sequelae:

a. Abnormal clovation of the diaphragm on either side.

b. Acute abscess of the lung.

c. Acute bronchitis until the condition is cured.

d. Acute fibrinous pleurisy, associated with acute nontuberculous pulmonary infection.

e. Acute mycotic disease of the lung such as coccidioidomycosis and histophasmosis.

f. Acute nontuberculous pneumonia.

g. Foreign body in trachea or bronchus.

h. Foreign body of the chest wall causing symptoms.

i. Lobectomy, history of, for a nontuberculous nonmalignant lesion with residual pulmonary disease. Removal of more than one lobe is cause for rejection regardless of the absence of residuals.

j. Other traumatic lesions of the chest or its contents.

*k. Pneumothorax or history thereof

within 1 year of date of examination if due to simple trauma or surgery; within 3 years of date of examination if of spontaneous origin. Surgical correction is acceptable if no significant residual disease or deformity remains and pulmonary function tests are within normal limits.

l. Recent fracture of ribs, sternum, clavicle, or scapula.

m. Significant abnormal findings on physical examination of the chest.

2-25. Tuberculous Lesions

(See para 2-38.)

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Active tuberculosis in any form or location.

b. Pulmonary tuberculosis, active within previous 2 years.

c. Substantiated history of one or more reactivations or relapses of pulmonary tuberculosis, or other definite evidence of poor host resistance to the tubercule bacillus.

2-26. Nontuberculous Lesions

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Acute mastitis, chronic cystic mastitis, if more than mild.

b. Bronchial asthma, except for childhood asthma with a trustworthy history of freedom from symptoms since the 12th birthday.

c. Bronchitis, chronic with evidence of pulmonary function disturbance.

d. Bronchicctasis.

e. Bronchopleural fistula.

f. Bullous or generalized pulmonary emphysema.

g. Chronic abscess of lung.

h. Chronic fibrous pleuritis of sufficient extent to interfere with pulmonary function or obscure the lung field in the roentgenogram.

i. Chronic mycotic diseases of the lung including coccidioidomycosis; residual cavitation or more than a few small sized inactive and stable residual modules demonstrated to be due to mycotic disease.

j. Empyema, residual sacculation or unhealed sinuses of chest wall following operation for empyema.

k. Extensive pulmonary fibrosis from any cause, producing dyspnea on exertion.

l. Foreign body of the lung or mediastinum causing symptoms or active inflammatory reaction.

m. Multiple cystic disease of the lung or solitary cyst which is large and incapacitating.

n. New growth of breast; history of mastectomy.

o. Osteomyclitis of rib, sternum, clavicle, scapula, or vertebra.

p. Pleurisy with effusion of unknown origin within the previous 2 years.

q. Sarcoidosis. See paragraph 2-38.

r. Suppurative periostitis of rib, sternum, clavicle, scapula, or vertebra.

Section XIV. MOUTH, NOSE, PHARYNX, TRACHEA, ESOPHAGUS, AND LARNYX

2-27. Mouth

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Hard palate, perforation of.

b. Harelip, unless satisfactorily repaired by surgery.

c. Leukoplakia, if severe.

d. Lips, unsightly mutilations of, from wounds, burns, or disease.

e. Ranula, if extensive. For other tumors see paragraphs 2-10 and 2-41.

2-28. Nose

The causes for rejection for appointment, enlistment, and induction are--

a. Allergic manifestations.

(1) Chronic atrophic rhinitis.

(2) Hay fever if severe; and if not controllable by antihistamines or by desensitization, or both.

b. Choana, atresia, or stenosis of, if symptomatic.

c. Nasal septum, perforation of:

(1) Associated with interference of function, ulceration of crusting, and when the result of organic disease.

(2) If progressive.

(3) If respiration is accompanied by a whistling sound.

d. Sinusitis, acute.

e. Sinusitis, chronic, when more than mild:

(1) Evidenced by any of the following: Chronic purulent nasal discharge, large nasal polyps, hyperplastic changes of the nasal tissues, or symptoms requiring frequent medical attention.

(2) Confirmed by transillumination or X-ray examination or both.

2-29. Pharynx, Trachea, Esophagus, and

Larynx

The causes for rejection for appointment, enlistment, ~~and induction~~ are--

a. Esophagus, organic disease of, such as ulceration, varices, achalasia; peptic esophagitis; if confirmed by appropriate X-ray or esophagoscopic examinations.

b. Laryngeal paralysis, sensory or motor, due to any cause.

c. Larynx, organic disease of, such as neoplasm, polyps, granuloma, ulceration, and chronic laryngitis.

d. Plica dysphonia venricularis.

e. Tracheostomy or truchal fistula.

2-30. Other Defects and Diseases

The causes for rejection for appointment, enlistment, ~~and induction~~ are--

a. Aphonia.

b. Deformities or conditions of the mouth, throat, pharynx, larynx, esophagus, and nose which interfere with mastication and swallowing of ordinary food, with speech, or with breathing.

c. Destructive syphilitic disease of the mouth, nose, throat, larynx, or esophagus. (See para 2-42).

d. Pharyngitis and nasopharyngitis

chronic, with positive history and objective evidence, if of such a degree as to result in excessive time lost ~~in the military environment.~~

Section XV. NEUROLOGICAL DISORDERS

2-31. Neurological Disorders

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Degenerative disorders.

(1) Cerebellar and Friedreich's ataxia.

(2) Cerebral arteriosclerosis.

(3) Encephalomyelitis, residuals of, which preclude the satisfactory performance of ~~military~~ duty.

(4) Huntington's chorea.

(5) Multiple sclerosis.

(6) Muscular atrophies and dystrophies of any type.

b. Miscellaneous

(1) Congenital malformations if associated with neurological manifestations and meningoccle even if uncomplicated.

(2) Migraine when frequent and incapacitating.

(3) Paralysis or weakness, deformity, discoordination, pain, sensory

disturbance, intellectual deficit, disturbances of consciousness, or personality abnormalities regardless of cause which is of such a nature or degree as to preclude the satisfactory performance of ~~military~~ duty.

(4) Tremors, spasmodic torticollis, athetosis or other abnormal movements more than mild.

c. Neurosyphilis of any form (general paresis, tabes dorsalis, meningovascular syphilis).

d. Paroxysmal convulsive disorders, disturbances of consciousness, all forms of psychomotor or temporal lobe epilepsy or history thereof except for seizures associated with toxic states or fever during childhood up to the age of 12.

e. Peripheral nerve disorder.

(1) Polyneuritis.

(2) Mononeuritis or neuralgia which is chronic or recurrent and of an intensity that is periodically incapacitating.

(3) Neurofibromatosis.

f. Spontaneous subarachnoid hemorrhage, verified history of, unless cause has been surgically corrected.

Section XVI. PSYCHOSES, PSYCHONEUROSES, AND PERSONALITY DISORDERS

2-32. Psychoses

The causes for rejection for appointment, enlistment, ~~and induction~~ are--

Psychosis or authenticated history of a psychotic illness other than those of a brief duration associated with a toxic or infectious process.

2-33. Psychoneuroses

The causes for rejection for appointment, enlistment, ~~and induction~~ are--

a. History of a psychoneurotic reaction which caused--

(1) Hospitalization.

(2) Prolonged care by a physician.

(3) Loss of time from normal pursuits for repeated periods even if of brief duration, or

(4) Symptoms or behavior of a repeated nature which impaired school or work efficiency.

b. History of a brief psychoneurotic reaction or nervous disturbance within the preceding 12 months which was sufficiently severe to require medical attention or absence from work or school for a brief period (~~maximum~~ minimum of 7 days).

2-34. Personality Disorders

The causes for rejection for appointment, enlistment, ~~and induction~~ are--

a. Character and behavior disorders, as evidenced by--

(1) Frequent encounters with law enforcement agencies, or antisocial attitudes or behavior which, while not a cause for administrative rejection, are tangible evidence of an impaired characterological capacity to adapt to the military service.

(2) Overt homosexuality or other forms of sexual deviant practices such as exhibitionism, transvestism, voyeurism, etc.

(3) Chronic alcoholism or alcohol addiction.

(4) Drug addiction.

b. Character and behavior disorders where it is evident by history and objective examination that the degree of immaturity, instability, personality inadequacy, and dependency will seriously interfere with adjustment in the ~~military~~ service as demonstrated by repeated inability to maintain reasonable adjustment in school, with employers and fellow-workers, and other society groups.

c. Other symptomatic immaturity reactions such as authenticated evidence of enuresis which is habitual or persistent, not due to an organic condition (para 2-15c) occurring beyond early adolescence (age 12 to 14) and stammering or stuttering of such a degree that the individual is normally unable to express himself clearly or to repeat commands.

*d. Specific learning defects secondary to organic or functional mental disorders.

Section XVII. SKIN AND CELLULAR TISSUES

2-35. Skin and Cellular Tissues

The causes for rejection for appointment, enlistment, and induction are--

a. Acne. Severe, when the face is markedly disfigured, or when extensive involvement of the neck, shoulders, chest, or back would be aggravated by or interfere with the wearing of ~~military~~ equipment.

b. Atoxic dermatitis. With active or residual lesions in characteristic areas (face and neck, antecubital and poplitical fossae, occasionally wrists and hands), or documented history thereof.

c. Cysts.

(1) Cysts, other than pilonidel. Of such a size or location as to interfere with the normal wearing of ~~military~~ equipment.

(2) Cysts, pilonidal. Pilonidal cysts, if evidenced by the presence of a tumor mass or a discharging sinus.

d. Dermatitis factitia.

e. Dermatitis herpetiformis.

f. Eczema. Any type which is chronic and resistant to treatment.

f. Elephentiasis or chronic lymphedema.

g. Epidermolysis bullosa; pemphigus.

h. Fungus infections, systemic or superficial types: If extensive and not amenable to treatment.

i. Furunculosis. Extensive, recurment, or chronic.

j. Hyperhidrosis of hands or feet: Chronic or severe.

k. Ichthyosis. Severe.

l. Leprosy. Any type.

m. Leukemia cutis; mycosis fungoides; Hodgkins' disease.

n. Lichen planus.

o. Lupus crythematosus (acute, subacute, or chronic) or any other dermatosis aggravated by sunlight.

p. Neurofibromatosis (Von Recklinghausen's disease).

q. Nevi or vascular tumors: If extensive, unsightly, or exposed to constant irritation.

r. Psoriasis or a verified history thereof.

s. Radiodermatitis.

t. Scars which are so extensive, deep, or adherent that they may interfere with the wearing of ~~military~~ equipment, or that show a tendency to ulcerate.

u. Scleroderma. Diffuse type.

v. Tuberculosis. See paragraph 2-38.

w. Urticaria. Chronic.

x. Warts, plantar, which have materially interfered with the following of a useful vocation in civilian life.

y. Xanthoma. If disabling or accompanied by hypercholesterolemia or hyperlipemia.

z. Any other chronic skin disorder of a degree or nature which requires frequent outpatient treatment or hospitalization, interferes with the satisfactory performance of duty, or is so disfiguring as to make the individual objectionable in ordinary social relationships.

*aa. Tattoos on any part of the body which in the opinion of the examining physician are obscene or so extensive on exposed areas as to be considered unsightly, are administratively disqualified.

Section XVIII. SPINE, SCAPULAE, RIBS, AND SACROILIAC JOINTS

2-36. Spine and Sacroiliac Joints

(See also para 2-11.)

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Arthritis. See paragraph 2-11a.

b. Complaint of disease or injury of the spine or sacroiliac joints either with or without objective signs and symptoms which have prevented the individual from successfully following a physically active vocation in civilian life. Substantiation or documentation of the complaint without symptoms and objective signs is required.

c. Deviation or curvature of spine from normal alignment, structure, or function (scoliosis, kyphosis, or lordosis, spina bifida acculta, spondylolysis, etc.), if--

(1) Mobility and weight-bearing power is poor.

(2) More than moderate restriction of normal physical activities is required.

(3) Of such a nature as to prevent the individual from following a physically active vocation in civilian life.

(4) Of a degree which will interfere with the wearing of a uniform or ~~military~~ equipment.

(5) Symptomatic, associated with positive physical finding(s) demonstrable by X-ray.

d. Diseases of the lumbosacral or sacroiliac joints of a chronic type and obviously associated with pain referred to the lower extremities, muscular spasm, postural deformities and limitation of motion in the lumbar region of the spine.

e. Granulomatous diseases either active or healed.

f. Healed fracture of the spine or pelvic bones with associated symptoms which have prevented the individual from following a physically active vocation in civilian life or which preclude the satisfactory performance of military duty.

g. Ruptured nucleus pulposus (herniation of intervertebral disk) or history of operation for this condition.

h. Spondylolysis or spondylolisthesis that is symptomatic or is likely to interfere with performance of duty or is likely to require assignment limitations.

2-37. Scapulae, Clavicles, and Ribs

(See para 2-11.)

The causes for rejection for appointment, enlistment, and induction are--

a. Fractures until well-healed, and until determined that the residuals thereof will not preclude the satisfactory performance of ~~military~~ duty.

b. Injury within the preceding 6 weeks, without fracture, or dislocation, of more than a minor nature.

c. Osteomyelitis of rib, sternum, clavicle, scapula or vertebra.

d. Prominent scapulae interfering with function or with the wearing of unfiorm or ~~military~~ equipment.

Section XIX. SYSTEMIC DISEASES AND MISCELLANEOUS CONDITIONS AND DEFECTS

2-38. Systemic Diseases

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Dermatomyositis.

b. Lupus erythemalosus: acute, subacute, or chronic.

c. Progressive systemic sclerosis.

d. Reiter's Disease.

e. Sarcoidosis.

f. Scleroderma, diffuse type.

g. Tuberculosis:

(1) Active tuberculosis in any form or location or substantiated history of active tuberculosis within the previous 2 years.

(2) Substantiated history of one or more reactivations or relapses of tuberculosis in any form or location or other definite evidence of poor host resistance to the tubercle bacillus.

(3) Residual physical or mental defects from past tuberculosis that would preclude the satisfactory performance of duty.

(4) (Deleted).

2-39. General and Miscellaneous Conditions and Defects

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Allergic manifestations.

(1) Allergic rhinitis (hay fever). See paragraph 2-28.

(2) Asthma. See paragraph 2-26b.

(3) Allergic dermatoses. See

paragraph 2-35.

(4) Visceral, abdominal, and cerebral allergy, if severe or not responsive to treatment.

(5) Bona fide history of moderate or severe generalized (as opposed to local) allergic reaction to insect bites or stings. Bona fide history of severe generalized reaction to common foods, e.g., milk, eggs, beef, and pork.

b. Any acute pathological condition, including acute communicable diseases, until recovery has occurred without sequelae.

c. Any deformity which is markedly unsightly or which impairs general functional ability to such an extent as to prevent satisfactory performance of ~~military~~ duty.

d. Chronic metallic poisoning especially beryllium, manganese, and mercury. Undesirable residuals from lead, arsenic, or silver poisoning make the examinee medically unacceptable.

e. Cold injury, residuals of, (example frostbite, chilblain, immersion foot, or trench foot) such as deep seated ache, paresthesia, hyperhidrosia, easily trauma-

tized skin, cyanosis, amputation of any digit, or ankylosis.

f. Positive tests for syphilis with negative TPI test unless there is a documented history of adequately-treated lues or any of the several conditions which are known to give a false-positive S.T.S. (vaccinia, infectious hepatitis, immunizations, atypical pneumonia, etc.) or unless there has been a reversal to a negative S.T.S. during an appropriate follow-up period (3 to 6 months).

g. Filariasia; trypanosomiasis; amebiasis; schistosomiasis; uncinariasis (hookworm) associated with anemia, malnutrition, etc., if more than mild, and other similar worm or animal parasitic infestations, including the carrier states thereof.

h. Heat pyroxia (heatstroke, sunstroke, etc.): Documented evidence of predisposition (includes disorders of sweat mechanism and previous serious episode), recurrent episodes requiring medical attention, or residual injury resulting therefrom (especially cardiac, cerebral, hepatic, and renal).

i. Industrial solvent and other chemi-

cal intoxication, chronic including carbon bisulfide, tricholorethylene, carbon tetrachloride, and methyl cellosolve.

j. Mycotic infection of internal organs.

k. Myostis or fibrositis; severe, chronic.

l. Residuals of tropical fevers and various parasitic or protozoal infestations which in the opinion of the medical examiner preclude the satisfactory performance of ~~military~~ duty.

Section XX. TUMORS AND MALIGNANT DISEASES

2-40. Benign Tumors

The causes for rejection for appointment, enlistment, and induction are--

a. Any tumor of the--

(1) Auditory canal, if obstructive.

(2) Eye or orbit (see also para 2-2a(6)).

(3) Kidney, bladder, testicle, or penis.

(4) Central nervous system and its membraneous coverings unless 5 years after surgery and no otherwise disqualifying residuals of surgery or of original lesion.

b. Benign tumors of the abdominal

wall if sufficiently large to interfere with ~~military~~ duty.

c. Benign tumors of bone likely to continue to enlarge, be subjected to trauma during military service, or show malignant potential.

*d. Benign tumors of the thyroid or other structures of the neck, including enlarged lymph nodes, if the enlargement is of such degree as to interfere with the wearing of a uniform or military equipment.

e. Tongue, benign tumor of, if it interferes with function.

f. Breast, thoracic contents, or chest wall, tumors, of, other than fibromata lipomata, and inclusion or sebaceous cysts which do not interfere with military duty.

g. For tumors of the internal or external female genitalia see paragraph 2-14h.

2-41. Malignant Diseases and Tumors

The causes for rejection for appointment, enlistment, ~~and induction are~~--

a. Leukemia, acute or chronic.

b. Malignant lymphomata.

c. Malignant tumor of any kind, at

any time, substantiated diagnosis of, even though surgically removed, confirmed by accepted laboratory procedures, except as noted in paragraph 2-12a(6).

Section XXI. VENEREAL DISEASES

2-42. Venereal Diseases

In general the finding of acute, uncomplicated venereal disease which can be expected to respond to treatment is not a cause for medical rejection for ~~military~~ service. The causes for rejection for appointment, enlistment, and induction are--

a. Chronic venereal disease which has not satisfactorily responded to treatment. The finding of a positive serologic test for syphilis following the adequate treatment of syphilis is not in itself considered evidence of chronic venereal disease which has not responded to treatment (para 2-39f).

b. Complications and permanent residuals of venereal disease if progressive, of such nature as to interfere with the satisfactory performance of duty, or if subject to aggravation by ~~military~~ service.

c. Neurosyphilis. See paragraph 2-31c.

*Section XXII. VOCATIONAL WAIVERS

2-43. Vocational Waivers

When an individual who fails to meet the medical standards listed in this chapter has demonstrated in the pursuit of his civilian occupation, profession, or avocation that he is likely to be able satisfactorily to perform the duties of a member of the ~~Armed Forces~~ State Police, the medical examiner may recommend to the Surgeon General ~~of the appropriate service~~ that such an individual be accepted on waivers of medical fitness standards. Such cases shall be considered by the Surgeon General before a final decision is made.

[THE OPINION OF THE DISTRICT COURT DATED MAY 31, 1974 IS PRINTED IN A SEPARATE APPENDIX TO THE JURISDICTIONAL STATEMENT AT PAGES 11-18.]

[THE OPINION OF THE DISTRICT COURT DATED DECEMBER 12, 1974 IS PRINTED IN A SEPARATE APPENDIX TO THE JURISDICTIONAL STATEMENT AT PAGES 19-23.]

[THE ORDER OF THE DISTRICT COURT DATE DECEMBER 12, 1974 IS PRINTED IN A SEPARATE APPENDIX TO THE JURISDICTIONAL STATEMENT AT PAGE 24.]

[TITLE OMITTED IN PRINTING.]

NOTICE OF APPEAL

Notice is hereby given that the Members and Executive Secretary of the Commonwealth of Massachusetts Board of Retirement and the Commissioner of Public Safety of the Commonwealth of Massachusetts, Defendants in the above-entitled action, hereby appeal to the Supreme Court of the United States from the Order enjoining the Defendants from further enforcement of Mass. G.L. c. 32, § 26(3) entered by a three-judge court in this action on the 12th day of December, 1974.

By their attorney,

/s/

Terence P. O'Malley
Assistant Attorney
General

December 23, 1974

[CERTIFICATE OF SERVICE OMITTED IN PRINTING.]